

2008

Congress & Sports Agents: A Legislative History of the Sports Agent Responsibility and Trust Act

Edmund P. Edmonds

Notre Dame Law School, edmonds.7@nd.edu

William H. Manz

Thomas J. Kettleson.

Follow this and additional works at: http://scholarship.law.nd.edu/writings_sports



Part of the [Entertainment, Arts, and Sports Law Commons](#)

Recommended Citation

Edmonds, Edmund P.; Manz, William H.; and Kettleson., Thomas J., "Congress & Sports Agents: A Legislative History of the Sports Agent Responsibility and Trust Act" (2008). *Writings*. 3.

http://scholarship.law.nd.edu/writings_sports/3

This Book is brought to you for free and open access by the Ed Edmonds' Collection on Sports Law at NDLScholarship. It has been accepted for inclusion in Writings by an authorized administrator of NDLScholarship. For more information, please contact lawdr@nd.edu.

CONGRESS AND SPORTS AGENTS:

A Legislative History of the Sports Agent Responsibility and Trust Act (SPARTA)

Edited by

Edmund P. Edmonds

*Associate Dean for Library and Information
Technology and Professor of Law
Notre Dame Law School*

William H. Manz

*Assistant Law Librarian and
Director of Student Publications
St. John's University School of Law*

Thomas J. Kettleon

*Barna, Guzy & Steffen, Ltd.
Minneapolis, Minnesota.*

William S. Hein & Co., Inc.
Buffalo, New York
2008

**HEIN'S SPORTS LAW
LEGISLATIVE HISTORY SERIES**

Baseball and Antitrust: The Legislative History of the Curt Flood
Act of 1998

Congress and Boxing: A Legislative History, 1960–2003

Congress and Sports Agents: A Legislative History of the
Sports Agent Responsibility and Trust Act (SPARTA)

ISBN 978-0-8377-1575-9

Introduction and selection and arrangement of materials
© 2008 William S. Hein & Co., Inc.

Printed in the United States of America

The quality of this reprint is equivalent to the
quality of the original work.



This volume is printed on acid-free paper
by William S. Hein & Co., Inc.

SUMMARY TABLE OF CONTENTS

Preface: Congress and Sports Agents	v
Introduction: SPARTA: Will Regulating Sports Agents with Federal Legislation Work? by Thomas J. Kettleson	vii
Legislative History of SPARTA	xxxvii
Table of Documents	xxxix
Part I – The Law	
Part II – Reports on the Law	
Part III – Hearing on the Law	
Part IV – Congressional Record	
Part V – Bill Versions	
Part VI – Related Bills	
Part VII – Related Report	
Part VIII – Related Hearing	
Part IX – Miscellaneous	
Appendix: State Statutes	
Alabama	Appendix-1
Arizona	Appendix-16
Arkansas	Appendix-27
California	Appendix-37
Colorado	Appendix-51
Connecticut	Appendix-57
Delaware	Appendix-68
District of Columbia	Appendix-80
Florida	Appendix-90
Georgia	Appendix-101
Idaho	Appendix-115
Indiana	Appendix-126

Iowa	Appendix-137
Kansas	Appendix-144
Kentucky	Appendix-156
Louisiana	Appendix-167
Maryland	Appendix-181
Michigan	Appendix-193
Minnesota	Appendix-195
Mississippi	Appendix-206
Missouri	Appendix-217
Montana	Appendix-229
Nevada	Appendix-239
New Hampshire	Appendix-254
New York	Appendix-264
North Carolina	Appendix-275
North Dakota	Appendix-286
Ohio	Appendix-295
Oklahoma	Appendix-313
Oregon	Appendix-324
Pennsylvania	Appendix-335
South Carolina	Appendix-351
South Dakota	Appendix-361
Tennessee	Appendix-372
Texas	Appendix-385
Utah	Appendix-403
Virgin Islands	Appendix-414
Washington	Appendix-425
West Virginia	Appendix-434
Wisconsin	Appendix-445
Wyoming	Appendix-455

PREFACE

Congress and Sports Agents

Ed Edmonds¹

This volume is the third publication in the Hein's Sports Law Legislative History Series.² The goal of the series is to provide readers with a comprehensive collection of the relevant Congressional documents related to that enacted legislation supplemented with an article that highlights the issues and concerns that caused Congress to move beyond mere bemusement to actual legislation. Although the number of sports-related concerns that Congress has addressed are significant, actual legislation is relatively modest. The two prior sets in the series involved baseball's labor and antitrust history and boxing. In both cases, legislation was passed only after decades of hearings and numerous bills that died in committees.

This volume involves the Sports Agent Responsibility and Trust Act (SPARTA).³ Although this work continues my efforts in this series with Bill Manz, I am particularly pleased to include an article, "SPARTA: Will Regulating Sports Agents With Federal Regulation Work?" by my former student at the University of St. Thomas School of Law, Thomas J. Kettleon, as an integral part of the completed project. Tom originally worked on this topic for my Sports Law Seminar at St. Thomas in fall 2005. Tom is now working at Barna, Guzy & Steffen, Ltd. in Minneapolis, Minnesota. The article provides an overview of the issues regarding agent

¹ Associate Dean for Library and Information Technology and Professor of Law, Notre Dame Law School.

² The previous two sets in this series are Edmund P. Edmonds & William H. Manz, *BASEBALL AND ANTITRUST: THE LEGISLATIVE HISTORY OF THE CURT FLOOD ACT OF 1998* (2001) (3 volumes) and Edmund P. Edmonds & William H. Manz, *CONGRESS AND BOXING: A LEGISLATIVE HISTORY, 1960–2003* (2005) (7 volumes).

³ Sports Agent Responsibility and Trust Act, 15 U.S.C. §§ 7801–7807 (Supp IV, 2004).

behavior that concerned Congress while also examining the act itself. Tom also addresses the Congressional motivation before concluding that the act falls short of the stated goal of protecting vulnerable athletes.

An additional feature of the set is an appendix containing state legislation in this area. A substantial majority of states concerned with regulating the behavior of sports agents have enacted a version of the Uniform Athlete Agents Act of 2000 as drafted by the National Conference of Commissioners on Uniform State Laws. The appendix includes the language from each specific state that enacted the uniform act while also including those acts from legislatures who charted their own course.

I want to thank Bill Manz and Tom Kettleon for their efforts as well as the work of Sheila Jarrett, Senior Editor at William S. Hein & Co., Inc. I also want to thank President Kevin Marmion and Senior Vice President Dick Spinelli of Hein for their patience and support of this series. Three members of the Notre Dame Law School community also deserve praise for their efforts on this project. Skyler Bradbury, Notre Dame Law School Class of 2008, did a citation and stylistic edit of Tom's article and worked on editing a substantial number of the state acts. Joshua Rinschler, Notre Dame Law School Class of 2009, also edited a number of state statutes. Teresa A. Welty, Kresge Law Library Administrative Assistant, expertly provided a consistent style to each of the state laws. This project would never have happened without the dedicated work and encouragement of everyone mentioned in this paragraph.

*Ed Edmonds
Notre Dame, Indiana
November 2007*

INTRODUCTION

SPARTA: Will Regulating Sports Agents with Federal Legislation Work?

Thomas J. Kettleison

Sports agents are an integral part of professional sports leagues. However, this has not always been the case. Sports agents have not always been welcome in professional sports.¹ For many years, numerous articles told the story of legendary Green Bay Packers coach and general manager Vince Lombardi and his attitude toward sports agents.² In 1963, Jim Ringo

¹ See Philip N. Fluhr, Jr., Comment, *The Regulation of Sports Agents and the Quest for Uniformity*, 6 SPORTS LAW J. 1, 2 (1999).

² See Scott Rosner, *Conflicts of Interest and the Shifting Paradigm of Athlete Representation*, 11 UCLA ENT. L. REV. 193, 196 (2004) (referring to the “oft-repeated story”); Patrick Connors, Remarks at Symposium on Ethics and Sports: Agent Regulation, in 14 FORDHAM INTELL. PROP. MEDIA & ENT. L. J. 747, 748–49 (2004) (acknowledging that there is some debate over the story); Scott Rosner, Remarks at Symposium on the Uniform Athlete Agent Act, in 13 SETON HALL J. SPORT L. 345, 354 (2003) (claiming Bob Woolf was the agent representing Ringo); Manpreet S. Dhanjal, Daniel S. Strick & Mark A. Conrad, *Contracting on the Web: Collegiate Athletes and Sports Agents Confront a New Hurdle in Closing the Deal*, 8 VILL. SPORTS & ENT. L.J. 37, 38 n.10 (2001) (referring to story as “one of the best-known stories about the early days of sports agency”); James G. Sammataro, Comment, *Business and Brotherhood, Can They Coincide? A Search Into Why Black Athletes Do Not Hire Black Agents*, 42 HOW. L.J. 535, 541 n.30 (1999) (referring to “the actions of Vince Lombardi”); Fluhr, *supra* note 1, at 1; Jamie P.A. Shulman, *The NHL Joins In: An Update on Sports Agent Regulation in Team Sports*, 4 SPORTS LAW J. 181, 182–83 (1997); Michael A. Weiss, *The Regulation of Sports Agents: Fact or Fiction?*, 1 SPORTS LAW J. 329, 329 (1994); Robert P. Garbarino, Practitioner’s Note, *So You Want To Be a Sports Lawyer, or is it a Player Agent, Player Representative, Sports Agent, Contract Advisor or Contract Representative?*, 1 VILL. SPORTS & ENT. L.J. 11, 39–40 (1994); Curtis D. Rypma, Note, *Sports Agents Representing Athletes: The Need for Comprehensive State*

was an all-pro center for the Packers and had played in every Packer game for the ten-year period from 1953–1963, starting in 126 consecutive games.³ Needless to say, Ringo was a well-known Packer who is said to have been a key figure in the “Packer Sweep.”⁴ After the last game of the 1963 season, Ringo was the player who brought the game ball to Lombardi at the end of the game before Lombardi was carried off the field on his players’ shoulders.⁵

As general manager of the Packers, Vince Lombardi was heavily involved in player contracts and negotiations. In fact, in 1938, Lombardi had attended one semester of law school at his alma mater, Fordham University.⁶ Lombardi failed out after his first semester at Fordham Law School, but used what he learned in his one semester of law school in the course of his career as a coach and general manager.⁷

As the story goes, during the 1963 season, Jim Ringo made only \$17,500. Because he was an integral part of the “Packer Sweep,” Ringo was unhappy with his salary and was going to ask the Packers for a \$7,500 pay increase.⁸ However, Ringo had hired a sports agent and had brought this agent with him to negotiate his contract with the Packers.⁹ When Ringo and his agent approached Lombardi in his office, Lombardi asked Ringo whom he had brought with him, to which Ringo replied that he had brought his agent in order to help him renegotiate his contract.¹⁰ Surprised and offended by this, Lombardi then excused himself from the room and is said to have made a phone call.¹¹ When Lombardi returned, he informed Ringo that he and his agent were negotiating with the wrong team because he had just traded Ringo to the Philadelphia Eagles.¹² Lombardi wished to deal with

Legislation, 24 VAL. U. L. REV. 481, 481 (citing Kennedy & Williamson, *Money in Sports: Part: 2*, SPORTS ILLUSTRATED, July 24, 1978, at 47).

³ Rob Reischel, *Ringo Brings Ring of Truth to Old Lombardi Tale; All-pro Center Says He Never Had an Agent*, MILWAUKEE SENTINEL, Jan. 31, 2003, Packer Plus Section, at 19; *See also* Connors, *supra* note 2.

⁴ Connors, *supra* note 2.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Reischel, *supra* note 3.

⁹ *Id.*

¹⁰ Connors, *supra* note 2.

¹¹ *Id.*

¹² *Id.*

players only and not their sports agents, and so Lombardi traded Jim Ringo, an all-pro starter and integral part of the Packer offense, because Ringo hired a sports agent.¹³ Lombardi was insulted by the mere presence of sports agents, who at that time were not as common as they are today.¹⁴

This interaction between Ringo and Lombardi has proven to be merely part of the Lombardi mystique. In a 2002 interview, Ringo stated, “I really don’t know how that story got going [. . .] sometimes people create their own stories and such fallacies are not good things.”¹⁵ What actually happened is that Lombardi and the Packers were working out a deal with the Eagles for several months, concluding that “Ringo was nearing the end of his career and made for good trade bait.”¹⁶ Lombardi had considered trading Ringo for quite some time, so at the end of the 1963 season, when Ringo himself demanded a raise that Lombardi felt was too much, Lombardi made the decision to trade him.¹⁷ Ringo insists that he never had an agent that day and that the story is fiction. Interestingly however, Lombardi never denied the story, which some authors have suggested was intentional in order to keep agents out of Lombardi-involved negotiations.¹⁸

Even though the account of Ringo being traded because he hired a sports agent has been proven false, Lombardi’s reasons for never denying the story may reflect Lombardi’s attitude toward the thought of sports agents. Today, if Lombardi was alive and coaching the Packers, he just might exclude agents such as Drew Rosenhaus from renegotiating player contracts.¹⁹ However, since the 1970s, with the rise of player bargaining power, player unions bargaining for their members, the demise of the reserve clause, and the ability of players to enter free agency, sports agents have become more and more a daily, and for the most part a necessary, part

¹³ *Id.*

¹⁴ Reischel, *supra* note 3.

¹⁵ *Id.*

¹⁶ DAVID MARANISS, WHEN PRIDE STILL MATTERED: A LIFE OF VINCE LOMBARDI 354–55 (1999); *see also* Reischel, *supra* note 3 (citing Maraniss).

¹⁷ Reischel, *supra* note 3.

¹⁸ *Id.*

¹⁹ Drew Rosenhaus is the sports agent representing several of today’s top NFL players including Terrell Owens and Javon Walker, who both held out on their contracts before the 2005 NFL season in hopes of renegotiating their contracts at the direction of Rosenhaus.

of the business.²⁰ The increased revenues from marketing and television deals in the professional sports leagues also have played an integral part in the growing acceptance of agents being a part of negotiations between teams and players.²¹ Theoretically, agents are to protect players from predatory sports teams or businessmen. In practice, however, many agents are merely concerned about their own interests, such as gaining a substantial amount of money through signing the next superstar, and gaining a percentage of the athlete's contract money. Therefore, these agents do not fulfill their fiduciary duty to prevent the athlete from being taken advantage of and, in many cases, become the exact kind of person that the agent is supposed to protect the athlete from.

This article will discuss Congress' recent enactment of the Sports Agent Responsibility and Trust Act of 2004 ("SPARTA"). This article will first discuss the background to the legislation by providing a discussion of Congress' understanding of the sports agent industry, particularly the sports agent industry as it relates to the college athlete. This paper will then identify many of the commonly held perceptions of sports agents and their interaction with student-athletes by setting forth one of the most well known and frequently cited stories of two agents who started off small, with small under-the-table payments, and ended up blackmailing and threatening injury to student-athletes. Next, this article will lay out the consequences and damages caused to student-athletes, professional athletes, and educational institutions when unscrupulous sports agents interact with these student-athletes in violation of National Collegiate Athletics Association ("NCAA") rules. Then, this article will describe why Congress determined that federal legislation was necessary. In the second section, this article will discuss SPARTA by focusing on the separate provisions of SPARTA, examining the positive aspects of SPARTA, while also explaining why SPARTA as it is presently enacted is not sufficient to serve a stated purpose of Congress to protect vulnerable student athletes. Last, this article will provide proposals that will work toward the Congressional purpose of protecting student athletes, educational institutions, and the NCAA.

²⁰ See Fluhr, *supra* note 1, at 2 (discussing several factors that have helped sports agents gain acceptance in professional sports).

²¹ *Id.*

I. BACKGROUND TO SPARTA

A. The Congressional Perception of Problems with Sports Agent Interaction with Student-Athletes

Nebraska's Third District United States Representative and former Nebraska Cornhusker head football coach Tom Osborne (R-NE) has first-hand experience with the abuses of sports agents. As the former head coach of one of the most prominent football programs in the country, winning national championships in 1994, 1995, and 1997,²² Rep. Osborne experienced the damage that can be done to athletes, families, football programs, and universities in general.²³ Rep. Osborne was troubled by inducements offered to athletes in order for the athlete to sign with an agent.²⁴ These inducements included money, cars, clothes, trips, and occasionally would include drugs and women.²⁵ In one case, one of Osborne's players was given a trip to California and during the visit was going to meet Patti LaBelle and a television star.²⁶ Mr. Osborne grew suspicious and phoned Lloyd Bloom, whose name had come up during Mr. Osborne's investigation.²⁷ In the end, Mr. Osborne's player was declared ineligible because of this activity with Bloom.²⁸ Mr. Osborne stated that this player may have been drafted in the first round of the National Football League ("NFL") draft had his collegiate career not been cut short because of his interaction with Bloom.²⁹ Other inducements cited by Mr. Osborne include situations where the agent puffs up the athlete's talent in order to make the athlete believe that he will be a first-round draft pick when in reality he may be a lower-round pick or even a free agent.³⁰ Sports agents get athletes to believe

²² University of Nebraska Football Website, http://www.huskers.com/SportSelect.dbml?DB_OEM_ID=100&DB_LANG=&KEY=&SPID=22&SPSID=230 (last visited June 8, 2006).

²³ *Sports Agent Responsibility and Trust Act: Hearing on H.R. 361 Before the Subcomm. on Commercial and Admin. Law of the H. Comm. on the Judiciary*, 108th Cong. 6 (2003) [hereinafter *Hearing*] (statement of Rep. Tom Osborne).

²⁴ *Id.* at 4 (testimony of Rep. Tom Osborne).

²⁵ *Id.*

²⁶ *Id.* at 5.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 4–5.

this by telling them that if they sign with the agent, he will make them a first-round pick.³¹ The agent tells the athlete that he will hire a personal trainer, a nutritionist, and whomever or whatever else is needed in order to test well at the NFL combine, guaranteeing a high draft spot.³²

Mr. Osborne was also troubled by the fact that agents do not need to be certified or have expertise, competence, or qualifications.³³ Rather, all an agent needs to do is claim that he or she is a sports agent, and then, after filling out state-specific registrations and paying the registration fees, that person is a sports agent, able to begin representing athletes in complex contract negotiations and business deals.³⁴ However, when an unqualified or uncertified agent is going to handle the athlete's business dealings, which includes negotiating his professional sports contract opposite contract negotiation experts, Rep. Osborne's concern was that a thirty-five-year-old athlete could be in a situation where he made millions of dollars playing professional sports, but at the end of his career has nothing to show for it because of an unethical or unqualified agent.³⁵ In fact, Mr. Osborne recognized that one-half of the players leaving the NFL have no money, sometimes due to self-inflicted problems, but many times due to the agents.³⁶ In fact, in 2002, the NFL Players Association ("NFLPA") "reported that agents, business partners, and financial advisors cheated seventy-eight NFL players out of more than \$42,000,000."³⁷

Congress has grown concerned over the deceptive and unethical treatment of amateur athletes. United States Representative Bart Gordon (D-TN), stated that:

³¹ *Id.*

³² *Id.* See also J.J. Pesavento, *One Person's Retrospect of the 2006 NFL Combine*, Mar. 2, 2006, <http://www.scoutingcombine.com/> (discussing the combine's importance to a NFL prospect and explaining that "the best college players are put under a microscope by each and every NFL team. They can no longer depend on their teammates or coaches as they have in their college career. They are basically alone and in control of their own fate in a sense. Stellar workouts can shoot them up draft boards while dismal outings can drop them like a lead balloon.").

³³ *Hearing, supra* note 23, at 4.

³⁴ *Id.*

³⁵ *Id.* at 5.

³⁶ *Id.* at 5.

³⁷ Lloyd Z. Remick & Christopher J. Cabott, *Keeping Out the Little Guy: An Older Contract Advisor's Concern, a Younger Contract Advisor's Lament*, 12 VILL. SPORTS & ENT. L.J. 1, 13 (2005).

Agents hoping to cash in on the next NFL or NBA [National Basketball Association] star will stop at nothing to convince a student-athlete with even a remote chance of playing professional sports to drop out of school and go pro early. Agents offer athletes cash, cars and clothing. They pay runners to curry favor with star athletes. They secretly pay off their friends and offer jobs to their family members who are in a position to influence the athlete. Sometimes, physical threats are involved.³⁸

Mr. Gordon recognized that agents who act in a state that currently has no legislation addressing the conduct of sports agents with student-athletes face very little consequence for their actions.³⁹

B. Today's Perception of Sports Agents

The common perception of sports agents is that many are dishonest and self-interested, and will do anything in their power to sign the next prospect.⁴⁰ Money, cars, jewelry, loans, parties, or anything imaginable is offered by several sports agents to the student-athlete in order to entice that professional prospect to sign with that particular agent.⁴¹ The most notable examples of unscrupulous agents are **Norby Walters** and **Lloyd Bloom**. **Walters** was a booking agent for entertainers, with high profile clients such as Miles Davis, Luther Vandross, Patti LaBelle, Janet Jackson, Kool and the Gang, Ben Vereen, The Jackson Five, Dionne Warwick, and The New Edition.⁴² **Bloom** was a former high school football player who approached **Walters** with the idea to start a business to represent college athletes who were prospective professional athletes.⁴³ **Walters** agreed, and the pair started World Sports & Entertainment, Inc.⁴⁴ **Walters** and **Bloom** started honestly, going to the Senior Bowl held in Mobile, Alabama, the annual football all-

³⁸ *Hearing, supra* note 23, at 9 (statement of Rep. Bart Gordon).

³⁹ *Id.*

⁴⁰ See Richard T. Karcher, *The NCAA's Regulations Related to the Use of Sports Agents in the Sport of Baseball: Are the Rules Detrimental to the Best Interests of the Student Athlete?*, 7 VAND. J. ENT. L. & PRAC. 215, 215 (2005).

⁴¹ Landis Cox, *Targeting Sports Agents With the Mail Fraud Statute*: United States v. **Norby Walters & Lloyd Bloom**, 41 DUKE L.J. 1157, 1158 (1992).

⁴² See *id.* at 1162 n.26; see also Craig Neff, *Agents of Turmoil*, SPORTS ILLUSTRATED, 34, 36 (Aug. 3, 1987); see also United States v. **Walters**, 913 F.2d 388, 389 (7th Cir. 1990).

⁴³ Cox, *supra* note 41.

⁴⁴ **Walters**, 913 F.2d at 389.

star game for college seniors with no remaining eligibility, in order to lure in potential clients.⁴⁵ Much to the pair's chagrin, many of these athletes had already signed with sports agents.⁴⁶ Walters and Bloom understood this to mean that their business strategy had to change if they were to be successful in the sports agent industry. Walters and Bloom then embarked on a different course.⁴⁷ However, this plan was nothing like their initial plan at the Senior Bowl. This time, Walters and Bloom were planning a more aggressive plan to build a client base.

Walters and Bloom focused on recruiting black athletes, many of whom were vulnerable to the lure of fortune and fame because of their economically disadvantaged background.⁴⁸ The initial contact of the athlete was over the telephone, then a meeting followed with the athlete and both Walters and Bloom.⁴⁹ At this meeting, Walters and Bloom would attempt to get the unrepresented player to sign a post-dated contract, requiring representation by World Sports & Entertainment, a contravention of NCAA rules.⁵⁰ In exchange for signing this contract, the player would typically receive between \$2,500 and \$4,000 cash, which was displayed and sometimes given to the player at the meeting.⁵¹ Sometimes this money constituted a gift to the player, and other times the money was considered a loan requiring that the student-athlete sign a promissory note to pay it back.⁵² The offer of money to a player from a disadvantaged background was

⁴⁵ See Cox, *supra* note 41; see also SeniorBowl.com, <http://www.seniorbowl.com/2006/events.htm> (last visited Dec. 18, 2005) (describing the Senior Bowl as “the nation’s most unique football game and football’s premier pre-draft event, annually featuring the country’s best senior collegiate football stars and top NFL draft prospects on teams representing the North and South which are coached by the entire coaching staffs from two National Football League teams.”).

⁴⁶ Walters, 913 F.2d at 390.

⁴⁷ *Id.*

⁴⁸ Neff, *supra* note 42, at 37.

⁴⁹ Cox, *supra* note 41, at 1164 (citing Trial Transcript at 636–37, *United States v. Walters*, No. 88 CR 709 (N.D. Ill. Apr. 13, 1989)).

⁵⁰ *Id.*

⁵¹ *Id.*; see also *How the Case vs. Walters, Bloom Developed*, ATLANTA JOURNAL-CONSTITUTION, Mar. 5, 1989, at B07 (provides an account of this type of meeting by University of Washington defensive end Reggie Rogers from Rogers’ lawsuit against Walters, stating that Walters took \$5,000 cash, spread it across the living room floor, and told Rogers that he would not be breaking NCAA rules by taking the cash and signing Walters as his agent).

⁵² Cox, *supra* note 41, at 1164.

enough for the student athlete to take the risk of losing college eligibility.⁵³ Players received other gifts as well, such as cars, airline travel, concert tickets, parties, clothing, and other merchandise.⁵⁴

This plan worked relatively well for Walters and Bloom. After three years they had signed fifty-eight football players.⁵⁵ However, Walters and Bloom became increasingly frustrated with players not honoring contracts with them and signing with other agents after graduation.⁵⁶ Although they knew that they had signed players in violation of NCAA rules, the pair, against the advice of counsel, sued players who breached contracts signed with them.⁵⁷ Apart from the litigation, physical threats were made on athletes and their families who attempted to breach a contract signed with Walters and Bloom.⁵⁸ This conduct, plus rumors of a link between the pair and organized crime, led to the prosecution of the pair for violations of the mail fraud statute, racketeering, and conspiracy.⁵⁹ Although what Walters and Bloom did is not necessarily indicative of the activities of all sports agents, the example does set forth what can happen when unscrupulous agents are allowed to operate unregulated within the sports agent profession.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ See Neff, *supra* note 42, at 40; see also *United States v. Walters*, 913 F.2d 388, 390 (7th Cir. 1990); see also Cox, *supra* note 41, at 1165 (noting that there is some debate about the number of players Walters and Bloom had signed).

⁵⁶ See Cox, *supra* note 41, at 1166.

⁵⁷ *Id.* at 1166–67; see also *How the Case vs. Walters, Bloom Developed*, ATLANTA JOURNAL-CONSTITUTION, Mar. 5, 1989, at B07 (“Walters and Bloom had filed lawsuits against former college standouts Brent Fullwood of Auburn and Terrence Flagler of Clemson, charging that the players signed contracts and accepted money before their senior seasons last fall—violations of NCAA rule—and then reneged on the contracts.”).

⁵⁸ Cox, *supra* note 41, at 1166 n.49; see also *How the Case vs. Walters, Bloom Developed*, ATLANTA JOURNAL-CONSTITUTION, Mar. 5, 1989, at B07 (discusses reports of two college seniors who told the NFLPA that Walters threatened “to break their legs” for firing him as their agent; also provides an account of Cris Carter’s dealings with Walters and Bloom. Carter was declared ineligible by the NCAA for accepting money from Walters and Bloom, so Carter brought a \$4 million dollar lawsuit for damages he suffered by being declared ineligible, alleging that Walters suggested to him that if he did not abide by the contract, Walters could have his legs broken).

⁵⁹ Cox, *supra* note 41, at 1167.

“Agents and athletes have a fiduciary relationship. Sports agents are under a duty to exercise the utmost degree of good faith, honesty, and loyalty toward their client athletes.”⁶⁰ Despite this fiduciary relationship, the most common complaints regarding sports agents are income mismanagement; excessive fees; conflicts of interest; incompetence; overly aggressive client recruitment practices; disruption of existing contractual relationships; and misappropriation of funds entrusted to the agent by the athlete.⁶¹ Many of these problems with unscrupulous sports agents are not based on the contract representation with professional sports teams. Sports agents often serve as financial advisors, entrusted with the million-dollar salaries of professional athletes to invest it in property, stocks, and other business ventures. Many sports agents are simply not concerned about the well-being of the athletes they represent and brush aside his or her fiduciary duty to the athlete. Rather, the interest that sports agents have in athletes is purely personal monetary gain. As former NFL wide receiver Curtis Conway put it, agents see athletes as nothing more than a dollar sign.⁶²

C. The Negative Effects of Unscrupulous Agents on Athletes, Universities, and the NCAA

At the center of the NCAA’s stated purpose is the promotion of amateurism in college sports.⁶³ When agents choose to violate the NCAA rules, the NCAA’s intention to promote amateurism is frustrated. Because agents are beyond the control of the NCAA, it must promulgate rules that

⁶⁰ WALTER T. CHAMPION, JR., *FUNDAMENTALS OF SPORTS LAW*, § 17:1, at 473–74 (2d ed. 2004) (discussing the representation of athletes generally).

⁶¹ Michael A. Weiss, *The Regulation of Sports Agents: Fact or Fiction?*, 1 *SPORTS LAW J.* 329, 331 (1994).

⁶² Patrick Kinmartin, *Agents Act Like Sharks to Players*, *THE DAILY TROJAN ONLINE*, Apr. 22, 2004, <http://www.dailytrojan.com/media/storage/paper679/news/2004/04/22/Sports/Agents.Act.Like.Sharks.To.Players-667892.shtml?norewrite200611131450&sourcedomain=www.dailytrojan.com>.

⁶³ NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, 2003-2004 *NCAA DIVISION I MANUAL* § 1.2(c) (2003) [hereinafter *NCAA MANUAL*]; see also *id.* § 1.3.1 (stating another basic purpose of the NCAA is “to maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body and, by so doing, retain a clear line of demarcation between intercollegiate athletics and professional sports”).

direct its member institutions and athletes in dealing with agents.⁶⁴ The stated consequence for an athlete who violates NCAA rules regarding agents includes the loss of eligibility.⁶⁵ In turn, when a university uses an athlete in a competition when the athlete has previously engaged in a prohibited transaction with an agent, the university forfeits the competition.⁶⁶ The university also may be forced to forfeit television revenue, bowl games and revenue, and scholarships, and it may also be forced to pay monetary penalties to the NCAA.⁶⁷ The effects on the athlete are more significant than the mere loss of eligibility. As a consequence of losing

⁶⁴ *E.g., id.* at § 12.1.1 *Amateur Status*.

An individual loses amateur status and thus shall not be eligible for intercollegiate competition in a particular sport if the individual: (a) Uses his or her athletics skill (directly or indirectly) for pay in any form in that sport; (b) Accepts a promise of pay even if such pay is to be received following completion of intercollegiate athletics participation; (c) Signs a contract or commitment of any kind to play professional athletics, regardless of its legal enforceability or any consideration received; (d) Receives, directly or indirectly, a salary, reimbursement of expenses or any other form of financial assistance from a professional sports organization based upon athletics skill or participation, except as permitted by NCAA rules and regulations; (e) Competes on any professional athletics team, even if no pay or remuneration for expenses was received; (f) Subsequent to initial full-time collegiate enrollment, enters into a professional draft; or (g) Enters into an agreement with an agent.

⁶⁵ *Id.*

⁶⁶ *Id.* at § 19.5.2.2. Penalties include:

(a) public reprimand and censure; (b) probation for at least one year; (c) reduction in number of financial aid awards that may be awarded; (d) prohibition against recruitment of prospective student athletes; (e) striking records and performances, return of individual or team awards; (f) financial penalty; (g) ineligibility for television programs involving coverage of the violating team; (h) ineligibility for invitational and postseason meets and tournaments; (i) ineligibility for one or more NCAA championship events; (j) prohibition against an intercollegiate sports team from participating against outside competition for a specified period; (k) ineligibility to vote.

See also id. at §. 19.7 (requiring return of television receipts gained with the aid of an ineligible participant and requiring that the institution pay a financial penalty).

⁶⁷ *Id.*

eligibility, the athlete will lose his or her scholarship. Many athletes cannot afford the cost of tuition if their athletic scholarships are taken away. In addition, the athlete's professional aspirations may be damaged by losing eligibility.⁶⁸ Rep. Osborne recognized that many agents will entice an athlete to enter into a representation agreement by puffing up the athlete's ability to become a first-round draft pick, when in reality the athlete may not have the possibility of a high draft position. These are only the common difficulties that self-interested agents cause. The methods used by Walters and Bloom in dealing with players result in the commission of crimes.

D. The Need for Federal Legislation

Thirty-three states have chosen to adopt a variation of the Uniform Athlete Agent Act ("UAAA"), drafted by the National Conference of Commissioners on Uniform State Laws in 2000.⁶⁹ "The purpose of the UAAA is to regulate agents, protect academic institutions from sanctions and reduce student-athlete ineligibility."⁷⁰ The UAAA puts restrictions on certain conduct of agents in a variety of ways. First, the UAAA requires registration of the agent and disclosure of important information, such as background, qualifications, and current and former clientele.⁷¹ Perhaps more importantly, the UAAA mandates the disclosure of any criminal convictions, and any administrative or litigation proceedings that the agent has been involved in.⁷² Second, the UAAA regulates the actual provisions of the agency contract and provides that the contract is voidable if it does not contain the required provisions.⁷³ Section 10 requires that the contract must be recorded, cannot be oral, and must contain fee information, as well as a warning to the athlete that he or she may lose eligibility by entering into the agency contract.⁷⁴ Third, the athlete is given fourteen days to void the

⁶⁸ *Hearing, supra* note 23, at 4 (testimony of Rep. Tom Osborne).

⁶⁹ Remick, *supra* note 37, at 6.

⁷⁰ UNIF. ATHLETE AGENTS ACT, Prefatory Note, 7 U.L.A. 191 (Supp. 2000) (discussing the purpose of the UAAA).

⁷¹ UNIF. ATHLETE AGENTS ACT, §§ 5(a)(3), (8), 7 U.L.A. 201–02.

⁷² *Id.* at § 5; see also R. Michael Rogers, *The Uniform Athlete Agent Act Fails to Fully Protect the College Athlete who Exhausts his Eligibility Before Turning Professional*, 2 VA. SPORTS & ENT. L.J. 63, 66–68 (2002) (providing a section-by-section analysis of the UAAA).

⁷³ UNIF. ATHLETE AGENTS ACT, § 10; see also Rogers, *supra* note 72, at 68.

⁷⁴ UNIF. ATHLETE AGENTS ACT, § 10.

contract even if the contract complies with section 10.⁷⁵ Last, section 14 of the UAAA makes certain conduct unlawful, including the contacting of an athlete by an agent who has not registered, and making material misstatements or payments with the intent that such misstatements or payments induce the athlete to enter into a contract.⁷⁶

However, the UAAA or similar legislation has not been uniformly enacted in every state. Additionally, there are several problems with state-by-state regulation and the effect it would have on a national sports industry. First, each state will have a registration requirement and a registration fee. “The sports agent will have to shoulder an intolerable administrative and financial burden in order to comply with each state’s registration, annual renewal, and bond or insurance requirements.”⁷⁷ With each state’s regulations come conflicting requirements and difficulty enforcing the provisions because of the national scope of the industry.⁷⁸ Instead of a difficult state-by-state scheme, it has been suggested that “[p]reemptive federal legislation imposing a single standard to be adjudicated in the federal courts would avoid the chaos.”⁷⁹ Last, and perhaps most significant, the UAAA lacks a provision giving a student-athlete a private right of action against a sports agent who causes the student-athlete’s loss of eligibility and other damage.⁸⁰

Competition to sign athletes is intense. For example, in the NFL, as of 2002, there were 1,196 certified football contract representatives.⁸¹ However, more than 800 of these contract representatives had no clients.⁸² Because of this competition, agents such as Walters and Bloom have resorted to unethical or even illegal conduct in order to sign athletes. United States Representative Cliff Stearns (R-FL) recognized this problem, stating that “student athletes are often targeted by unscrupulous agents who suffer little or no consequence for their continued deception. In today’s multi-billion dollar professional sports industry, collegiate athletes with even the slightest potential of becoming a highly paid professional athlete often find

⁷⁵ *Id.*

⁷⁶ *Id.* at § 14; *see also* Rogers, *supra* note 72, at 68–69.

⁷⁷ David L. Dunn, *Regulation of Sports Agents: Since at First It Hasn’t Succeeded, Try Federal Legislation*, 39 HASTINGS L.J. 1031, 1066 (1998).

⁷⁸ *Id.* at 1065.

⁷⁹ *Id.* at 1066.

⁸⁰ Remick, *supra* note 37, at 12.

⁸¹ *Hearing, supra* note 23, at 7 (statement of Rep. Tom Osborne).

⁸² *Id.*

themselves in the cross hairs of sports agents.”⁸³ Making competition even more intense is the fact that the NCAA does not allow its athletes to sign contracts with agents if the athlete wishes to continue to participate in NCAA events.⁸⁴ Competition becomes more intense because there is a small window of time between the end of a student-athlete’s college career and the time that they sign with a sports agent in order to get an early start on their discussions with professional teams.⁸⁵ When agents violate the NCAA rules by offering money or gifts before the athlete finishes his eligibility and then signs the athlete against NCAA rules, other agents that do follow NCAA rules suffer the consequences because the pool of talented athletes to sign is diminished. Because of weak enforcement ability, in order to be successful, agents would often make the business decision to violate NCAA rules in order to get ahead of the competition.⁸⁶

Prior to 2004, enforcement problems were an issue in the regulation of sports agents. Because there was no nationwide enforcement regime, many states and its students-athletes had no remedy for damages caused by unscrupulous sports agents. States attempting to regulate in the field could be faced with objections via the Commerce Clause prohibition against states regulating affairs of interstate commerce.⁸⁷ States and its student-athletes also faced personal jurisdiction issues, where often a sports agent would not be subject to the state’s courts because of a lack of actual contact with the state.⁸⁸ In the absence of federal regulation, athletes residing in states with

⁸³ 149 CONG. REC. H4896 (daily ed. June 4, 2003) (statement of Rep. Cliff Stearns).

⁸⁴ NCAA MANUAL, *supra* note 63, at § 12.3.

⁸⁵ Cox, *supra* note 41, at 1162 (This point is illustrated by the fact that Walters and Bloom went to the 1985 Senior Bowl to sign athletes, only to find out that many players had already signed with agents “many months prior” to the Event, even though the event is held near the end of the college football season).

⁸⁶ See *id.* at 1170–71 (citing Bruce Selcraig, *Agents of Violence?*, SPORTS ILLUSTRATED, Apr. 6, 1987, at 25); see also *id.* at 1168–69 (discussing the factors that affect an agents behavior, including economic incentives).

⁸⁷ Thomas Hall & Sander N. Rothchild, *Federal Regulation of Athlete Agents*, N.Y. L.J., May 27, 2005, § 4, at 3.

⁸⁸ *Id.*; see also, e.g., *Hearing, supra* note 23, at 8 (statement of Rep. Bart Gordon) (“Now, some states already have legislation, but it is not uniform. You have a situation where North Carolina doesn’t have anything, so you can have a kid that could be playing at the University of Tennessee where we do have State law but they are from North Carolina, so when you go down in North Carolina they get you, or if they go up and play Boston College, there is not a law in Massachusetts, they can

out legislation to protect athletes from the illegal conduct of sports agent could be left without a remedy against the agent.⁸⁹

Congress recognized the need for a federal enforcement regime. Rep. Stearns, in discussing “agents lacking any integrity,” stated that “there are few, if any, consequences to dissuade them.”⁹⁰ Sports agents who engage in this type of activity often are faced with “little or no consequences for their continued deception.”⁹¹ A problem recognized by Congress was that although many states have adopted a version of the UAAA, state laws are often inconsistent, which has made for a lack of convincing enforcement.⁹² Additionally, a main concern was that several states did not have sufficient legislation. Addressing the problem of sports agent requires uniform enforcement across the nation.⁹³

II. THE SPORTS AGENT RESPONSIBILITY AND TRUST ACT

Although a majority of states have adopted legislation directed toward the conduct of sports agents, the federal government found it necessary to enact Public Law 108-304,⁹⁴ the Sports Agent Responsibility and Trust Act (“SPARTA”). Congress has recognized that many acts of sports agents go unpunished because of “disparate, ineffective, or in some cases, a complete absence of state laws.”⁹⁵ Congress was concerned with this, especially because it would give agents the ability to “victim forum shop” to sign athletes in states that had not yet regulated sports agent conduct.⁹⁶ Congress also recognized the interstate nature of collegiate athletics and the need to have a “federal backstop” to ensure that athletes in states that do not regu-

get you there.”).

⁸⁹ *Hearing, supra* note 23, at 6 (statement of Rep. Tom Osborne).

⁹⁰ *See* 149 CONG. REC. H4896 (daily ed. June 4, 2003) (statement of Rep. Cliff Stearns).

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Sports Agent Responsibility and Trust Act, Pub. L. No. 108-304, 118 Stat. 1125 (2004).

⁹⁵ H.R. REP. NO. 108-24, pt. 2, at 5 (2003).

⁹⁶ *Id.* at 33 (statement of Rep. Chris Cannon).

late are protected.⁹⁷ However, it was noted that Congress wanted the legislation to be very narrow and to use existing vehicles available to enforce the provisions of SPARTA.⁹⁸

Congress modeled SPARTA after the UAAA.⁹⁹ SPARTA was intended to provide remedies to protect student athletes and educational institutions, particularly in states with no existing law addressing athlete agent conduct.¹⁰⁰ In the hearing on HR 361, United States Representative Bart Gordon (D-TN) stated that it was not the intent of SPARTA to create a “federal sports police.”¹⁰¹ Rather, SPARTA is merely intended to protect athletes in states that have no legislation covering the conduct of sports agents.¹⁰²

SPARTA was introduced in the House by Rep. Gordon (D-TN) with co-sponsor United States Representative Tom Osborne (D-NE), and was enacted to address conduct of sports agents toward amateur athletes. The federal government was urged to intervene in this industry by the NCAA, educational institutions, and members of the sports agent industry.¹⁰³ In particular, SPARTA was enacted to prevent sports agents from pursuing athletes while they were still in season with remaining college eligibility, and to counter the harms suffered by NCAA member institutions when a sports agent entices a player to accept anything of value or sign a representation agreement. SPARTA was also necessary to counter the effects unscrupulous agents have on the industry.¹⁰⁴ United States Senator John McCain (R-AZ) recognized the need for SPARTA because of a perception around the country that penalties imposed on sports agents who engage in this harmful conduct are not as strong as they need to be.¹⁰⁵ SPARTA “seeks to protect the often guileless student-athlete from real-life consequences of dealing with the unscrupulous.”¹⁰⁶

⁹⁷ *Hearing, supra* note 23, at 7 (statement of Rep. Tom Osborne).

⁹⁸ H.R. Rep. No. 108-24, pt. 2, at 15 (2003) (statement of Rep. Bart Gordon).

⁹⁹ *Id.* at 33 (statement of Rep. Chris Cannon).

¹⁰⁰ *Hearing, supra* note 23, at 9 (statement of Rep. Bart Gordon).

¹⁰¹ *Id.* at 15 (statement of Rep. Bart Gordon).

¹⁰² *Id.* at 2 (statement of Rep. Chris Cannon).

¹⁰³ Hall, *supra* note 87, at 1.

¹⁰⁴ *Id.* at 3.

¹⁰⁵ 150 CONG. REC. S9044-01 (daily ed. Sept. 9, 2004) (statement of Sen. John McCain).

¹⁰⁶ H.R. Rep. No. 108-24, pt. 2, at 33 (2003) (statement of Rep. Chris Cannon).

A. SPARTA's Provisions

SPARTA has three objectives. First, SPARTA was enacted to “establish[] as illegal certain activities by agents relating to the signing of contracts with student-athletes.”¹⁰⁷ Second, SPARTA gives the Federal Trade Commission (“FTC”) the authority to regulate the industry under SPARTA’s provisions, which deems a violation of the Act an unfair or deceptive act or practice of trade, subject to the authority of the FTC.¹⁰⁸ Last, SPARTA provides protection to colleges and universities, as well as to the states, by providing a federal cause of action for damages sustained when an agent violates one of SPARTA’s provisions.¹⁰⁹

1. *Conduct Prohibited under SPARTA*

SPARTA was designed to address the problem of sports agents taking advantage of uninformed athletes to the detriment of the athlete and to the detriment of the NCAA member-institution.¹¹⁰ Section 3 lays out the conduct that SPARTA prohibits. Under section 3, sports agents are barred from recruiting and/or soliciting student athletes to sign a representation contract through false or misleading information, false promises or representations, or by giving the athlete or anyone associated with the athlete anything of value before signing the agency contract.¹¹¹ Section 3 also contains a provision requiring that any agency contract entered into between a student-athlete and an agent must contain a warning to the student-athlete that entering into an agency contract may affect the student-athlete’s eligibility as an amateur athlete.¹¹² This provision is designed as one last level of protection for the student-athlete, who, through this provision, will be able to make an informed decision regarding whether or not he truly wishes to enter into an agency contract and void his remaining college eligibility,

¹⁰⁷ Eric Willenbacher, Note, *Regulating Sports Agents: Why Current Federal and State Efforts Do Not Deter the Unscrupulous Athlete-Agent and How a National Licensing System May Cure the Problem*, 78 ST. JOHN’S L. REV. 1225, 1234 (2004).

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Hearing, supra* note 23, at 8 (statement of Rep. Bart Gordon).

¹¹¹ Hall, *supra* note 87, at 2.

¹¹² Sports Agent Responsibility and Trust Act, Pub. L. No. 108-304, § 3(b)(3), 118 Stat. 1125, 1126 (2004).

and there will be no room for a misunderstanding.¹¹³ When the student-athlete can make an informed decision under section 3(b), when the information he is given is truthful, and when he is not faced with monetary pressures, the playing field for the student-athlete and the sports agent are leveled.

2. Federal Enforcement

One of the most important provisions of SPARTA is section 4, which gives the FTC the power to police the sports agent industry and prosecute violations of SPARTA on the federal level.¹¹⁴ This is so because any violation of SPARTA is deemed an unfair and deceptive trade practice, subject to the authority of the FTC.¹¹⁵ Although state law is not preempted,¹¹⁶ this provision is necessary to protect athletes in states that do not already have legislation regarding the conduct of sports agents.¹¹⁷ Although the athlete is not given a private right of action through SPARTA, the FTC can step in and act to protect the athletes from agents where state law does not do so. This is designed to have a considerable deterrent effect, since getting prosecuted, jailed, and/or fined at the federal level can discourage even the most dishonest sports agents from pursuing an illegal course of conduct.

The FTC has expressed some reservations about SPARTA. On June 5, 2002, Howard Beales, the then Director of the Federal Trade Commission's Bureau of Consumer Protection, testified before the United States House of Representatives Subcommittee on Commerce, Trade and Consumer Protection regarding SPARTA.¹¹⁸ Mr. Beales provided the Subcommittee with a basic description of the FTC and its ability to protect consumers from unfair competition and deceptive trade practices.¹¹⁹ Underlying his testimony was

¹¹³ 149 CONG. REC. H4896 (daily ed. June 4, 2003) (statement of Rep. Cliff Stearns).

¹¹⁴ Sports Agent Responsibility and Trust Act, Pub. L. No. 108-304, § 4, 118 Stat. 1125, 1127 (2004).

¹¹⁵ *Id.*

¹¹⁶ *Id.* § 7.

¹¹⁷ *Hearing, supra* note 23, at 7 (statement of Rep. Tom Osborne).

¹¹⁸ Federal Trade Commission, *Federal Trade Commission Testifies on Proposed Sports Agent Responsibility and Trust Act*, June 5, 2002, <http://www.ftc.gov/opa/2002/06/sports.htm>.

¹¹⁹ *Id.*

the FTC's inclination to focus on situations where it has received "a large number of complaints or other evidence that the deceptive act is widespread or an emerging trend."¹²⁰ Mr. Beales maintained that the FTC typically does not focus on enforcement in individual disputes, but rather on protecting the public in general.¹²¹ More specifically, however, Mr. Beales noted many concerns about SPARTA. First, SPARTA purports to ban agents from giving false or misleading statements. However, the giving of deceptive statements is covered in section 5 of the Federal Trade Commission Act, and numerous other state laws, making SPARTA merely duplicative of other legislation.¹²² Second, Mr. Beales expressed deep concern with SPARTA, stating that "while many industry self-regulatory programs provide significant and desirable protections for consumers, it is important to consider whether particular private restraints may function to protect the industry rather than consumers."¹²³ Mr. Beales cautioned the Subcommittee to carefully examine the effects of the NCAA's private restraints on athletes before Congress enacts them into law.¹²⁴

Mr. Beales' testimony provided suggestions for Congress to consider before enacting SPARTA. Because section 5 of the FTC Act already prohibits the giving of false or misleading information, Mr. Beales suggested that if Congress felt that current law, specifically section 5 of the FTC Act, did not provide sufficient remedies to address the problem of sports agents giving false or misleading information, it should provide a private cause of action to the student athlete rather than enacting a merely duplicative prohibition on the giving of false or misleading statements.¹²⁵ Doing this would be a more efficient means of enforcing an individual athlete's rights than delegating this duty to the FTC, since the FTC tends to take enforcement action only when there is a widespread public interest.¹²⁶ Additionally, Congressional intent behind SPARTA is to protect student athletes, and providing a private cause of action would further this purpose more than FTC enforcement would.¹²⁷ Mr. Beales' testimony concluded by reminding the Subcommittee that the FTC "protects consumers from deceptive or

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

unfair acts and practices, but it generally focuses on acts that affect a significant number of consumers or signify an emerging trend[,]”¹²⁸ and requesting that the Subcommittee “examine carefully the need for, and the appropriateness of, the underlying private restraint before enacting it into law.”¹²⁹

Each individual state also has a cause of action. Section 5 gives each state a federal cause of action for damages against agents whose actions threaten or adversely affect residents of a state.¹³⁰ This section gives a state the ability, if it did not have it before, to enjoin a practice that violates section 3, enforce compliance with SPARTA, or obtain damages, restitution, or other compensation.¹³¹ This provision is important to give a state the ability to enforce SPARTA in the absence of having its own legislation and will give the states the ability to protect its own student-athletes. However, if the FTC has already taken action against a potential state target, the state may not pursue the matter at that time.¹³²

3. NCAA Relief

One of the major harms caused by athlete agents is rendering an athlete ineligible, or a school for that matter, because the agent and athlete acted in contravention of NCAA rules. This can cause the school to lose a significant amount of money, or to put a stigma on the school’s athletic program. In his testimony before the House Judiciary Committee’s Subcommittee on Commercial and Administrative Law, Rep. Osborne testified that:

[S]chools ... stand to lose financially from the deceptive actions of sports agents. If a student athlete loses his eligibility because he accepted inducements from an agent, and his ineligibility is not disclosed to the school and the ineligible student is allowed to compete in violation of the rules, that school may face a number of sanctions, including suspensions, fines, the potential loss of post-season play and revenue that this might present.¹³³

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ Sports Agent Responsibility and Trust Act, Pub. L. No. 108-304, § 5(a)(1)(A), 118 Stat. 1125, 1127 (2004).

¹³¹ *Id.*

¹³² *Id.* § 5(d).

¹³³ *Hearing, supra* note 23, at 6 (statement of Rep. Tom Osborne).

Athletes can be declared ineligible and lose his or her scholarship, a team can lose available scholarship money for subsequent years, schools can face significant monetary penalties, television revenue can be decreased, games can be forfeited, and the post-season can become off limits.¹³⁴ The stigma that is put on a school because its players have violated NCAA rules regarding athlete/agent dealings is significant.¹³⁵ The monetary loss schools can encounter is also substantial. Numerous examples illustrate the harm that can be done to schools.

For example, in 1987, the NCAA forced the University of Alabama to surrender \$253,000 that it received from the 1987 NCAA basketball tournament because its star basketball player, Derrick McKey, and starter Terry Coner signed with and received money from **Norby Walters** and **Lloyd Bloom**.¹³⁶ McKey lost his eligibility from his dealings with **Walters** and **Bloom**.¹³⁷

In 1997, Curtis Enis of Penn State was declared ineligible to play in the Citrus Bowl versus Florida because he accepted a \$325 suit from an agent.¹³⁸ With their star running back out, Penn State lost 21-6 to Florida.¹³⁹

¹³⁴ See NCAA MANUAL, *supra* note 63, at §§ 12, 19.

¹³⁵ Willenbacher, *supra* note 107, at 1232.

¹³⁶ Tony Barnhart, *College Official Applaud Guilty Verdict for Walters, Bloom*, ATLANTA JOURNAL-CONSTITUTION, Apr. 4, 1989, at E01.

¹³⁷ *Id.*

¹³⁸ See Associated Press, *Enis Tied to \$400 Suit That Could Undress PS: Report That Agent Purchased it Being Probed*, PITT. POST-GAZETTE, Dec. 21, 1997, at C14 (Curtis Enis was a star 6-foot-1, 233 pound running back at Penn State, who as a junior had already rushed for 3,256 career rushing yards and in that season, had 1,363 rushing yards and 19 touchdowns as of Dec. 21, 1997); see also Lori Shontz, *PSU Suspends Enis Out of Citrus as RB Admits Accepting Gifts and Then Lying*, PITT. POST-GAZETTE, Dec. 24, 1997, at C1 (Enis also accepted a \$75 shirt); Lori Shontz, *Enis' Former Agent Won't Fight Charges*, PITT. POST-GAZETTE, Dec. 24, 1998, at C1 (Enis accepted \$1,141.94 worth of clothing from Jeffrey Nalley, which, besides the \$405 suit from John Craig Fashions, included three warm-up suits from Champs worth \$270, a pair of Sneakers and warm-up suit from Kelly's worth \$169.98, a pair of Nike basketball shoes, and three wind suits from Kelly's worth \$294.46).

¹³⁹ Penn State Football Searchable History, <http://scripts.cac.psu.edu/dept/pnsportsinfo/scripts/history/scheds.pl> (last visited Nov. 15, 2006).

Enis was also declared ineligible for the 1998 season.¹⁴⁰ This incident caused embarrassment to Penn State and possibly significant financial harm.

Next, the University of Michigan suffered significant harm from violating NCAA rules. Although the prohibited conduct was at the hands of a booster to the school, it serves to illustrate how schools can suffer when its players violate NCAA rules. Chris Webber received payments from a booster of the school over a five year period.¹⁴¹ Because of these payments, even though the University had no knowledge of their existence,¹⁴² Michigan was penalized, suffered a two-year suspension from post-season play, was forced to forfeit 112 games that were played in the 1990's, lost one scholarship per year for four years beginning in 2004, and was ordered to return the \$450,000 it received from NCAA tournament proceeds.¹⁴³ Michigan may also not associate in any way with Webber, Maurice Taylor, Robert Traylor, and Louis Bullock for ten years.¹⁴⁴ The stigma placed on the school brought a less than stellar recruiting class,¹⁴⁵ because a school that gets less television time and which loses the possibility of post-season play is much less attractive to a blue-chip basketball player set on making it to the professional ranks.

A significant problem before SPARTA was that the NCAA rules did not apply to agents, so there was no incentive to abide by NCAA rules. **Norby Walters** was quoted as saying "We've put \$800,000 into this draft I'll sign anyone I want. The NCAA can't enforce its rules. I'll sign a sophomore if I want."¹⁴⁶ Section 6 gives colleges and universities the right to be notified that an athlete has entered into an agency contract within seventy-two hours or before the athlete's next event, whichever is sooner.¹⁴⁷ This provision is designed to protect these schools from unknowingly

¹⁴⁰ Associated Press, *supra* note 138.

¹⁴¹ Steve Wieberg, *NCAA Punishes Michigan for 1990's Rules Violations*, USA TODAY, May 9, 2003, at C01; *see also* Willenbacher, *supra* note 107, at 1232.

¹⁴² *But see* Willenbacher *supra* note 107, at 1232 n.38 (This fact is subject to debate because there were wide ranging suspicions of Coach Steve Fisher's program being "plagued by violations.").

¹⁴³ *Id.* at 1232.

¹⁴⁴ *See* Wieberg, *supra* note 142.

¹⁴⁵ *See* Willenbacher, *supra* note 107, at 1232.

¹⁴⁶ Cox, *supra* note 41, at 1170–71 (citing Bruce Selcraig, *Agents of Violence?*, SPORTS ILLUSTRATED, Apr. 6, 1987, at 25.)

¹⁴⁷ Sports Agent Responsibility and Trust Act, Pub. L. No. 108-304, § 6(a), 118 Stat. 1125, 1128 (2004).

allowing a student-athlete to participate in an NCAA event after being rendered ineligible by signing an agency contract. Section 6 also gives the schools a civil remedy to recover actual damages in situations where a student-athlete has signed with an agent, but the agent and student-athlete do not communicate this to the athletic director.¹⁴⁸ This section of SPARTA will be effective in two regards. First, section 6 acts as a disincentive for agents to break NCAA rules regarding rendering a student-athlete ineligible by providing anything of value or entering a representation contract and then failing to timely disclose this fact to the university. This will prevent the university from using the ineligible student-athlete throughout the season or in an end-of-the-season tournament, which in turn causes the NCAA to demand return of any financial gain, such as money earned from a bowl game or money earned from gate receipts. Second, if the university does suffer financial harm by unknowingly using the ineligible student-athlete, it then has a cause of action against the offending agent.

B. SPARTA's Good Qualities

SPARTA was a necessary tool to bridge the gap between states that do have sufficient agent regulation and states that do not have sufficient regulation. One commentator has argued that SPARTA is unnecessary because of existing federal deterrents, such as the mail fraud statute.¹⁴⁹ This assertion was based on a federal district court's conviction for mail fraud in *United States v. Walters*,¹⁵⁰ and then the Seventh Circuit's subsequent reversal on appeal because the trial court refused to allow the defense to raise a good-faith reliance on counsel.¹⁵¹ However, this argument does not take into account the remand of the case. After *Walters* pled guilty on remand, the appeal again went before the Seventh Circuit Court of Appeals.¹⁵² The conviction was reversed, with the Seventh Circuit holding that the "forms mailed by colleges to the NCAA verifying college football players' eligibility were not sufficiently integral to defendant's scheme, to sign players secretly to agency contracts prior to expiration of their college

¹⁴⁸ *Id.* at § 6(b)(2).

¹⁴⁹ See Willenbacher, *supra* note 107, at 1235–36 (discussing *United States v. Walters* as authority for the proposition that the mail fraud statute can be used to deter sports agents from engaging in unethical activities).

¹⁵⁰ *United States v. Walters*, 711 F. Supp. 1435 (N.D. Ill. 1989).

¹⁵¹ *United States v. Walters*, 913 F.2d 388, 392 (7th Cir. 1990).

¹⁵² *United States v. Walters*, 997 F.2d 1219, 1219 (7th Cir. 1993).

eligibility, to support a mail fraud conviction.”¹⁵³ The court further held that even if mailings were sufficient, *Walters* “did not cause universities to use the mails;”¹⁵⁴ and “in any event, the conviction could not be sustained on basis that defendant deprived universities of scholarship funds paid to athletes who were no longer eligible, where defendant did not obtain any property from the victim universities by fraud.”¹⁵⁵ It is highly doubtful that an agent causing a university to lose scholarship money will ever again serve as the basis of a mail fraud conviction, since the Seventh Circuit unequivocally held the use of the mails was tenuous,¹⁵⁶ and that the agents did not obtain property from the universities.¹⁵⁷

Other deterrents have been argued to be sufficient to deter sports agents from questionable conduct. First, there is a potential investigation by the Securities and Exchange Commission (“SEC”), because many sports agents serve as financial advisors.¹⁵⁸ For example, the SEC investigated investment advisor David Dayton Lukens, who was accused of stealing over \$25 million dollars from athlete clients such as Simeon Rice, Eric Dickerson, and Shannon Sharpe.¹⁵⁹ Although Mr. Lukens settled with the SEC,¹⁶⁰ the SEC does have the authority to regulate investment advisors,¹⁶¹ which would include a sports agent serving as an athlete’s investment advisor. However, what about agents that do not serve as financial advisors? This argument does not account for the sports agent who does not provide investment advice, and SEC enforcement, although sufficient to control investment advisors, is not a sufficient deterrent to punish unscrupulous sports agents.

Second, one commentator has argued that professional rules of conduct for professionals such as lawyers and accountants in the sports agent

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ Prosecutors may hesitate to prosecute with this case being either mandatory or persuasive authority. Additionally, if a prosecutor did choose to use this same theory, a court would undoubtedly look to *Walters* for guidance.

¹⁵⁷ See *Walters*, 997 F.2d at 1219.

¹⁵⁸ Willenbacher, *supra* note 107, at 1236.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ See Investment Advisers Act, 15 U.S.C. § 80b-1 to -21 (2000).

industry will serve as effective deterrents.¹⁶² For example, lawyers are subject to the rules of professional conduct in the jurisdiction in which they are licensed. The same is true for accountants and certified financial advisors. However, these professionals are not necessarily the problem agents that need to be deterred. The problem agents are often the agents who are not subject to rules of conduct for any profession. Rather, the problem agents, as noted by Rep. Osborne in his testimony before the House Judiciary Committee, are the agents that do not have any qualifications or competence.¹⁶³

C. What About the Problems SPARTA Does Not Cover?

“Only one thing is needed to become a sports agent today: an athlete for a client.”¹⁶⁴ Sports agents, however, perform many specialized services for athletes that require experience and competence in order to protect the athlete. Examples of these services include “negotiating and drafting contracts, structuring compensation packages, and interpreting collective bargaining agreements.”¹⁶⁵ Sports agents often provide other ancillary services, such as financial planning, marketing, business development, and other professional services. Despite the complexity of the services typically offered, sports agents are not legally required to meet any educational, professional, experiential, training, or competence standards in order to serve an as athlete agent.¹⁶⁶ “While the professional players associations, the NCAA and certain states have taken positive steps in attempting to regulate the activities of sports agents, athletes cannot be assured that they are being represented by competent and trust-worthy agents.”¹⁶⁷ Current legislation does not set a minimum standard for competence. The National Football League Players Association (“NFLPA”), however, has taken steps toward ensuring competence by requiring that new contract advisors attend the

¹⁶² Paul T. Dee, *Ethical Aspects of Representing Professional Athletes*, 3 MARQ. SPORTS L.J. 111, 112 (1992).

¹⁶³ *Hearing, supra* note 23, at 4 (introduction).

¹⁶⁴ Gary P. Kohn, *Sports Agents Representing Professional Athletes: Being Certified Means Never Having To Say You're Qualified*, 6 WTR ENT. & SPORTS LAW. 1, 1 (1988).

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

NFLPA seminar for new agents and pass a written examination.¹⁶⁸ Additionally, in its 2005 amendments to the NFLPA Regulations, the NFLPA now requires both an undergraduate degree and a post-graduate degree.¹⁶⁹ The National Basketball Players Association does not require agents to pass an examination, but the application for certification contains extensive and in-depth questions regarding the applicant's background and qualifications, and certification is subject to approval.¹⁷⁰ The Major League Baseball Players Association has also implemented an agent certification system.¹⁷¹

The most direct harm caused by agents is suffered by the individual student-athletes.¹⁷² The House of Representatives Subcommittee on Commercial and Administrative Law discussed the possibility of providing a private right of action at the hearing of H.R. 361.¹⁷³ SPARTA however does not create a private cause of action for individuals and their families.¹⁷⁴ United States Representative Melvin Watt, (D-NC), a co-sponsor of the legislation, expressed surprise that SPARTA lacked a provision allowing a private right of action for athletes, because "first and foremost, it is the athlete that gets injured."¹⁷⁵ In response, Rep. Gordon explained:

[A]s a practical matter, you are still dealing with 18, 19, and 20-year olds, many of which are coming from an already fairly desperate

¹⁶⁸ See National Football League Players Association, <http://nflpa.org/RulesAndRegs/AgentCertification.aspx> (last visited November 10, 2006) The sixty-question multiple-choice examination covers the Salary Cap, Player Benefits, NFLPA Regulations Governing Contract Advisors, and other issues relevant to player representation. Although the exam open book and open notes, there is a three-hour time limit.

¹⁶⁹ National Football League Players Association Legal Department, *Memorandum dated May 16, 2005 regarding the 2005 amendments to the NFLPA regulations*, <http://www.nflpa.org/PDFs/Agents/2005RegAmendments.pdf> (last visited June 8, 2006) (a waiver of this requirement is available if the agent has sufficient negotiating experience).

¹⁷⁰ See National Basketball Players Association, *Application for Certification as an NBPA Player Agent*, http://www.nbpa.com/downloads/NBPA_Agent_application.pdf (last visited June 8, 2006).

¹⁷¹ See Kohn, *supra* note 165, at 10.

¹⁷² *Hearing, supra* note 23, at 15 (remarks of Rep. Melvin Watt).

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

economic situation, that [sic] probably also doesn't have either experience or a comfort maybe [sic] level in the court system, and that it would seem that it would be better to, again, through using your State Attorney Generals they would be more comfortable taking this action.¹⁷⁶

Rep. Gordon later apologized to Rep. Watt for his lack of a complete answer.¹⁷⁷ However, no private right of action appears in SPARTA. Rather, SPARTA provides a private cause of action to universities that have been financially harmed because of an agent's activities. Although SPARTA is modeled after the UAAA and was intended to be a federal backstop for states that lack sufficient sports agent legislation, SPARTA and the UAAA do not necessarily have the same purpose. As noted above, the UAAA was designed to regulate agents, protect academic institutions from sanctions and reduce student-athlete ineligibility.¹⁷⁸ However, much of the legislative history for SPARTA puts a major focus on the protection the student-athlete, although it fails to sufficiently achieve this goal.

SPARTA also deputizes a state's attorney general in order to pursue a cause of action on behalf of a state's citizens. However, the legislation does not protect the individuals it purports to protect because it does not provide an individualized remedy to each affected student-athlete after a sports agent has caused the athlete to lose eligibility and suffer potential educational and financial harm.

D. SPARTA's Deficiencies

As the FTC explained in its comments before Congress, no private right of action exists for those student-athletes harmed by a sports agent.¹⁷⁹ Although the purpose of SPARTA, as one Congressmen stated, is "to protect the often guileless student athlete from real-life consequences of dealing with the unscrupulous,"¹⁸⁰ Congress in the end failed to provide the most direct form of protection available to these student-athletes who suffer "real-life consequences." Rep. Watt recognized that this was a significant deficiency of SPARTA. In a hearing of the House Subcommittee on Commercial and Administrative Law, Rep. Watt expressed concern that although

¹⁷⁶ *Id.*

¹⁷⁷ *Id.* at 16.

¹⁷⁸ UNIF. ATHLETE AGENTS ACT, Prefatory Note, 7 U.L.A. 191 (Supp. 2000).

¹⁷⁹ See Federal Trade Commission, *supra* note 118.

¹⁸⁰ H.R. REP. NO. 108-24, pt. 2, at 33 (2003) (statement of Rep. Chris Cannon).

SPARTA has “high-powered, high-minded sounding purposes,” it lacked what he felt should be the “first recourse,” which is a private cause of action for the student-athlete and his or her family, who suffer the most direct and significant harm.¹⁸¹ Although academic institutions have a statutory cause of action through SPARTA, athletes who suffer the most direct harm are not granted a cause of action against agents who use unfair and deceptive trade practices against them. Although a private right of action was not expressly granted to those individuals harmed by unscrupulous agents, Congress did expressly state that SPARTA was not meant to close out any individual’s causes of action under federal or state law.¹⁸²

Additionally, there remains no set standard for what is required to establish competence as a sports agent. Unlike traditional professionals, who in order to be a part of the profession must meet extensive educational requirements and pass extensive examinations, sports agents are able to enter the industry possessing little knowledge of what it takes to satisfactorily represent an athlete. Also, it is common for a sports agent to take on other aspects of the athlete’s business dealings, such as marketing, endorsement deals, and investments. When a sports agent is not required to be competent in any of these areas, it is the athlete that suffers.

Although the UAAA addresses the issue of sports agent registration,¹⁸³ SPARTA does not. A national registration requirement is necessary because of the difficulty, and hence non-compliance with a state-by-state sports agent registration requirement under the UAAA.¹⁸⁴ Also, the national registration requirement will serve one of the intended purposes of SPARTA, which is to have a “federal backstop” for cases coming from states that have not yet adopted any form of sports agent regulation.¹⁸⁵

III. PROPOSALS

The players associations of the National Football League, the National Basketball Association, Major League Baseball, and the National Hockey League, as well as the NCAA need to work together to adopt uniform

¹⁸¹ *Hearing, supra* note 23, at 14–15 (statement of Rep. Melvin Watt).

¹⁸² Sports Agent Responsibility and Trust Act, Pub. L. No. 108-304, § 7, 118 Stat. 1125, 1128 (2004).

¹⁸³ UNIF. ATHLETE AGENTS ACT, Art. 2, 7 U.L.A. 191 (Supp. 2000).

¹⁸⁴ *See Remick, supra* note 37.

¹⁸⁵ H.R. REP. NO. 108-24, pt. 2, at 7 (2003) (statement of Rep. Tom Osborne).

standards governing agents, and band together to force the sports agent industry to adopt an industry governing association much like the American Bar Association to protect athletes against unscrupulous athlete agents.

By establishing an industry association, the problem of competency can be addressed. As of today, there are no uniform standards regarding agent competence. A basic test addressing all aspects of athlete representation, or a special year-long educational requirement, would ensure that agents have the necessary knowledge to effectively represent athletes. This would also ensure that agents know exactly the harm they cause to student-athletes, universities, and the NCAA. Ultimately, the solution to this problem needs to come from the players unions working in collaboration with the NCAA, whether they force agents to be in a regulated association, or they will not certify an agent unless they have completed the mandatory educational requirement. The players unions need to realize that adopting standards for competency is a method of self-protection, and will also provide protection for its future members. Each current member was at one time not protected by league agent regulations, which supports the idea that the players associations need to work in collaboration with the NCAA to protect athletes that are not yet members.¹⁸⁶

The NCAA also has a powerful tool to address these issues. Increased NCAA education of its athletes regarding agent contact will give student-athletes the ability to choose an agent wisely. Additionally, this will empower NCAA athletes to be able to make their own informed decisions, rather than have an aggressive agent telling them what to do. Currently, the NCAA educates its athletes about the harms of dealing with an agent before eligibility expires and also gives its players information on what to look for and what to ask when selecting an agent.¹⁸⁷ However, the NCAA should require that all athletes learn the basics of spending, investing, and saving money. This may give the athletes the ability to understand how to use money wisely and will also empower the athlete to take charge of his own affairs, rather than entrusting them to an agent.

¹⁸⁶ National Basketball Players Association, *NBA Regulations Governing Player Agents, Introduction 3*, available at http://www.nbpa.com/downloads/NBPA_Regulation.pdf, (last visited June 8, 2006) (stating the NBA regulations protect athletes who have not yet signed their first NBA contract).

¹⁸⁷ See Crissy Kaisebier, *Playing the Agent Game: NCAA Ramping Up Efforts to Ensure Student-Athletes Know Pitfalls of Early Signing*, NCAA NEWS, May 27, 2002, <http://www.ncaa.org/news/2002/20020527/active/3911n35.html>.

Because student-athletes are not allowed to have jobs, the NCAA should increase the amount of scholarship money available to athletes since they are not allowed to have jobs in season. By providing athletes with spending money, they will not have to look outside the school to live comfortably. This will help solve the problem of athletes taking money from agents and allow athletes to live comfortably during their college years. This will also recognize the student-athlete for his contribution to his or her educational institution.

Many agents realize the stigma that is placed on them because of the actions of a small number of agents. Self-regulation is the key for agents to rid themselves of this stigma. The Association of Representatives of Professional Athletes (“ARPA”) was an organization that was introduced as an attempt to self-regulate.¹⁸⁸ However, membership in this association was voluntary, and the association did not have enforcement power.¹⁸⁹ If the players associations of the major sports league, or even legislation, required membership in this type of association, as well as providing it with enforcement power, the problem of unscrupulous sports agents can be minimized.

IV. CONCLUSION

In order for SPARTA to be effective in fulfilling its ultimate goal of protecting student-athletes from predatory agents, Congress needs to reexamine SPARTA to add base-level standards for competence. Additionally, Congress needs to provide student-athletes with a private cause of action in order to fully protect them from predatory agents. As it is currently written, SPARTA merely protects colleges and universities from suffering permanent financial loss at the hands of a sports agent. If Congress really means to protect student-athletes with SPARTA, Congress needs to amend SPARTA to include more student-athlete friendly provisions, such as a provision giving a student-athlete a private cause of action against a sport agent who violates SPARTA. Until SPARTA is amended, SPARTA will not accomplish its purpose of protecting student-athletes from unscrupulous sports agents.

¹⁸⁸ See Dunn, *supra* note 77, at 1039.

¹⁸⁹ See *id.* at 1040.

LEGISLATIVE HISTORY OF SPARTA

S. 1170, Sports Agent Responsibility and Trust Act

June 3, 2003

Introduced by Sen. Ron Wyden; referred to the Committee on Commerce, Science, and Transportation (text of measure as introduced: CR S7245-7246).

H.R. 361, Sports Agent Responsibility and Trust Act

Jan. 27, 2003

Introduced by Rep. Bart Gordon; referred to the House Committee on Energy and Commerce.

Jan. 29, 2003

Ordered to be reported by voice vote.

Mar. 5, 2003

Reported by the Committee on Energy and Commerce (H. Rpt. 108-24, Part I); referred the House Committee on the Judiciary.

May 1, 2003

Referred to the Subcommittee on Commercial and Administrative Law.

May 15, 2003

Subcommittee hearings held.

May 21, 2003

Ordered to be reported as amended by voice vote.

June 2, 2003

Reported (as amended) by the Committee on Judiciary (H. Rpt. 108-24, Part II).

June 4, 2003

Passed in House by voice vote.

June 5, 2003

Received in the Senate; referred to the Committee on Commerce, Science, and Transportation.

Sept. 9, 2004

Passed Senate without amendment by unanimous consent.

Sept. 16, 2004

Cleared for White House; presented to President.

Sept. 16, 2004

Signed by President; became Public Law No. 108-304.

TABLE OF DOCUMENTS

Part I – The Law

- Doc. No. 1** Sports Agent Responsibility and Trust Act, Pub. L. No. 108-304, 118 Stat. 1125.

Part II – Reports on the Law

- Doc. No. 2** Sports Agent Responsibility and Trust Act, S. Rpt. No. 108-24, Part 1 (Mar. 5, 2003).
- Doc. No. 3** Sports Agent Responsibility and Trust Act, S. Rpt. No. 108-24, Part 2 (June 2, 2003).

Part III – Hearing on the Law

- Doc. No. 4** *Sports Agent Responsibility and Trust Act*, hearing before the Subcommittee on Commercial and Administrative Law of the House Judiciary Committee (May 15, 2003).

Part IV – Congressional Record

- Doc. No. 5** Remarks of Rep. Osborne, 148 Cong. Rec. H2429 (daily ed. May 14, 2002).
- Doc. No. 6** Introduction of S. 3039 by Sen. Wyden, 148 Cong. Rec. S9906 (daily ed. Oct. 3, 2002).
- Doc. No. 7** Remarks of Rep. Osborne, 149 Cong. Rec. H3620 (daily ed. May 1, 2003).
- Doc. No. 8** Introduction of S. 1170 by Sen. Wyden, 149 Cong. Rec. S7244 (daily ed. June 3, 2003).
- Doc. No. 9** House consideration and passage of H. 361, 149 Cong. Rec. H4895 (daily ed. June 4, 2003).

Doc. No. 10 Senate consideration and passage of H.R. 361, 150 Cong. Rec. S9044 (daily ed. Sept. 9, 2004).

Part V – Bill Versions

Doc. No. 11 H.R. 361, Sports Agent Responsibility and Trust Act (as introduced).

Doc. No. 12 H.R. 361, Sports Agent Responsibility and Trust Act (as reported in House).

Doc. No. 13 H.R. 361, Sports Agent Responsibility and Trust Act (as passed by House).

Doc. No. 14 H.R. 361, Sports Agent Responsibility and Trust Act (as referred to Senate).

Doc. No. 15 H.R. 361, Sports Agent Responsibility and Trust Act (as passed by House and Senate).

Part VI – Related Bills

Doc. No. 16 S. 1170, Sports Agent Responsibility and Trust Act (as introduced).

Doc. No. 17 H.R. 4701, Sports Agent Responsibility and Trust Act (as introduced).

Doc. No. 18 H.R. 4701, Sports Agent Responsibility and Trust Act (as reported in House).

Doc. No. 19 S. 3039, Sports Agent Responsibility and Trust Act (as introduced).

Part VII – Related Report

Doc. No. 20 Sports Agent Responsibility and Trust Act, H. Rpt. 107-725 (Oct. 7, 2002).

Part VIII – Related Hearing

Doc. No. 21 *Sports Agent Responsibility and Trust Act*, hearing before the Subcommittee on Commerce, Trade, and Consumer Relations of the House Committee on Energy and Commerce (June 5, 2002).

Part IX – Miscellaneous

Doc. No. 22 Congressional Budget Office Cost Estimate: H.R. 4701, Sports Agent Responsibility and Trust Act (Oct. 4, 2002).

Doc. No. 23 Congressional Budget Office Cost Estimate: H.R. 361, Sports Agent Responsibility and Trust Act (Jan. 31, 2003).

Doc. No. 24 Congressional Budget Office Cost Estimate: H.R. 361, Sports Agent Responsibility and Trust Act (May 28, 2003).

DOCUMENT NO. 1

Public Law 108-304
108th Congress

An Act

To designate certain conduct by sports agents relating to the signing of contracts with student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission.

Sept. 24, 2004
[H.R. 361]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sports Agent
Responsibility
and Trust Act.
Education.
15 USC 7801
note.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Sports Agent Responsibility and Trust Act”.

SEC. 2. DEFINITIONS.

15 USC 7801.

As used in this Act, the following definitions apply:

(1) **AGENCY CONTRACT.**—The term “agency contract” means an oral or written agreement in which a student athlete authorizes a person to negotiate or solicit on behalf of the student athlete a professional sports contract or an endorsement contract.

(2) **ATHLETE AGENT.**—The term “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, and does not include a spouse, parent, sibling, grandparent, or guardian of such student athlete, any legal counsel for purposes other than that of representative agency, or an individual acting solely on behalf of a professional sports team or professional sports organization.

(3) **ATHLETIC DIRECTOR.**—The term “athletic director” means an individual responsible for administering the athletic program of an educational institution or, in the case that such program is administered separately, the athletic program for male students or the athletic program for female students, as appropriate.

(4) **COMMISSION.**—The term “Commission” means the Federal Trade Commission.

(5) **ENDORSEMENT CONTRACT.**—The term “endorsement contract” means an agreement under which a student athlete is employed or receives consideration for the use by the other party of that individual’s person, name, image, or likeness in the promotion of any product, service, or event.

(6) **INTERCOLLEGIATE SPORT.**—The term “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 college athletics.

(7) **PROFESSIONAL SPORTS CONTRACT.**—The term “professional sports 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.

(8) **STATE.**—The term “State” includes 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.

(9) **STUDENT ATHLETE.**—The term “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. An individual who is permanently ineligible to participate in a particular intercollegiate sport is not a student athlete for purposes of that sport.

15 USC 7802.

SEC. 3. REGULATION OF UNFAIR AND DECEPTIVE ACTS AND PRACTICES IN CONNECTION WITH THE CONTACT BETWEEN AN ATHLETE AGENT AND A STUDENT ATHLETE.

(a) **CONDUCT PROHIBITED.**—It is unlawful for an athlete agent to—

(1) directly or indirectly recruit or solicit a student athlete to enter into an agency contract, by—

(A) giving any false or misleading information or making a false promise or representation; or

(B) providing anything of value to a student athlete or anyone associated with the student athlete before the student athlete enters into an agency contract, including any consideration in the form of a loan, or acting in the capacity of a guarantor or co-guarantor for any debt;

(2) enter into an agency contract with a student athlete without providing the student athlete with the disclosure document described in subsection (b); or

(3) predate or postdate an agency contract.

(b) **REQUIRED DISCLOSURE BY ATHLETE AGENTS TO STUDENT ATHLETES.**—

(1) **IN GENERAL.**—In conjunction with the entering into of an agency contract, an athlete agent shall provide to the student athlete, or, if the student athlete is under the age of 18, to such student athlete’s parent or legal guardian, a disclosure document that meets the requirements of this subsection. Such disclosure document is separate from and in addition to any disclosure which may be required under State law.

(2) **SIGNATURE OF STUDENT ATHLETE.**—The disclosure document must be signed by the student athlete, or, if the student athlete is under the age of 18, by such student athlete’s parent or legal guardian, prior to entering into the agency contract.

(3) **REQUIRED LANGUAGE.**—The disclosure document must contain, in close proximity to the signature of the student athlete, or, if the student athlete is under the age of 18, the signature of such student athlete’s parent or legal guardian, a conspicuous notice in boldface type stating: “Warning to Student Athlete: If you agree orally or in writing to be represented by an agent now or in the future you may lose your eligibility to compete as a student athlete in your sport. Within 72 hours after entering into this contract or before the next athletic

event in which you are eligible to participate, whichever occurs first, both you and the agent by whom you are agreeing to be represented must notify the athletic director of the educational institution at which you are enrolled, or other individual responsible for athletic programs at such educational institution, that you have entered into an agency contract.”

SEC. 4. ENFORCEMENT.

15 USC 7803.

(a) **UNFAIR OR DECEPTIVE ACT OR PRACTICE.**—A violation of this Act shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(b) **ACTIONS BY THE COMMISSION.**—The Commission shall enforce this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act.

SEC. 5. ACTIONS BY STATES.

15 USC 7804.

(a) **IN GENERAL.**—

(1) **CIVIL ACTIONS.**—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any athlete agent in a practice that violates section 3 of this Act, the State may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—

- (A) enjoin that practice;
- (B) enforce compliance with this Act; or
- (C) obtain damage, restitution, or other compensation on behalf of residents of the State.

(2) **NOTICE.**—

(A) **IN GENERAL.**—Before filing an action under paragraph (1), the attorney general of the State involved shall provide to the Commission—

- (i) written notice of that action; and
- (ii) a copy of the complaint for that action.

(B) **EXEMPTION.**—Subparagraph (A) shall not apply with respect to the filing of an action by an attorney general of a State under this subsection, if the attorney general determines that it is not feasible to provide the notice described in that subparagraph before filing of the action. In such case, the attorney general of a State shall provide notice and a copy of the complaint to the Commission at the same time as the attorney general files the action.

(b) **INTERVENTION.**—

(1) **IN GENERAL.**—On receiving notice under subsection (a)(2), the Commission shall have the right to intervene in the action that is the subject of the notice.

(2) **EFFECT OF INTERVENTION.**—If the Commission intervenes in an action under subsection (a), it shall have the right—

- (A) to be heard with respect to any matter that arises in that action; and
- (B) to file a petition for appeal.

(c) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this title shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

- (1) conduct investigations;
- (2) administer oaths or affirmations; or
- (3) compel the attendance of witnesses or the production of documentary and other evidence.

(d) ACTIONS BY THE COMMISSION.—In any case in which an action is instituted by or on behalf of the Commission for a violation of section 3, no State may, during the pendency of that action, institute an action under subsection (a) against any defendant named in the complaint in that action.

(e) VENUE.—Any action brought under subsection (a) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

(f) SERVICE OF PROCESS.—In an action brought under subsection (a), process may be served in any district in which the defendant—

- (1) is an inhabitant; or
- (2) may be found.

15 USC 7805.

SEC. 6. PROTECTION OF EDUCATIONAL INSTITUTION.

Deadline.

(a) NOTICE REQUIRED.—Within 72 hours after entering into an agency contract or before the next athletic event in which the student athlete may participate, whichever occurs first, the athlete agent and the student athlete shall each inform the athletic director of the educational institution at which the student athlete is enrolled, or other individual responsible for athletic programs at such educational institution, that the student athlete has entered into an agency contract, and the athlete agent shall provide the athletic director with notice in writing of such a contract.

(b) CIVIL REMEDY.—

(1) IN GENERAL.—An educational institution has a right of action against an athlete agent for damages caused by a violation of this Act.

(2) DAMAGES.—Damages of an educational institution may include and are limited to actual losses and expenses incurred because, as a result of the conduct of the athlete agent, the educational institution was injured by a violation of this Act 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 actions likely to be imposed by such an association or conference.

(3) COSTS AND ATTORNEYS FEES.—In an action taken under this section, the court may award to the prevailing party costs and reasonable attorneys fees.

(4) EFFECT ON OTHER RIGHTS, REMEDIES AND DEFENSES.—This section does not restrict the rights, remedies, or defenses of any person under law or equity.

15 USC 7806.

SEC. 7. LIMITATION.

Nothing in this Act shall be construed to prohibit an individual from seeking any remedies available under existing Federal or State law or equity.

SEC. 8. SENSE OF CONGRESS.

15 USC 7807.

It is the sense of Congress that States should enact the Uniform Athlete Agents Act of 2000 drafted by the National Conference of Commissioners on Uniform State Laws, to protect student athletes and the integrity of amateur sports from unscrupulous sports agents. In particular, it is the sense of Congress that States should enact the provisions relating to the registration of sports agents, the required form of contract, the right of the student athlete to cancel an agency contract, the disclosure requirements relating to record maintenance, reporting, renewal, notice, warning, and security, and the provisions for reciprocity among the States.

Approved September 24, 2004.

LEGISLATIVE HISTORY—H.R. 361:

HOUSE REPORTS: No. 108-24, Pt. 1 (Comm. on Energy and Commerce) and Pt. 2 (Comm. on the Judiciary).

CONGRESSIONAL RECORD:

Vol. 149 (2003): June 4, considered and passed House.
Vol. 150 (2004): Sept. 9, considered and passed Senate.



DOCUMENT NO. 2

SPORTS AGENT RESPONSIBILITY AND TRUST ACT

MARCH 5, 2003.—Ordered to be printed

Mr. TAUZIN, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

[To accompany H.R. 361]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 361) to designate certain conduct by sports agents relating to the signing of contracts with student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission, having considered the same, report favorably thereon with amendment and recommend that the bill do pass.

CONTENTS

	Page
Purpose and Summary	1
Background and Need for Legislation	2
Hearings	2
Committee Consideration	3
Committee Votes	3
Committee Oversight Findings	3
Statement of General Performance Goals and Objectives	3
New Budget Authority, Entitlement Authority, and Tax Expenditures	3
Committee Cost Estimate	3
Congressional Budget Office Estimate	3
Federal Mandates Statement	5
Advisory Committee Statement	5
Constitutional Authority Statement	5
Applicability to Legislative Branch	5
Section-by-Section Analysis of the Legislation	5
Changes in Existing Law Made by the Bill, as Reported	7

PURPOSE AND SUMMARY

The purpose of H.R. 361 is to designate certain conduct by sports agents related to the signing of contracts to represent student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission (FTC). Additionally, H.R. 361 pro-

vides the states with the authority to bring civil action against violators in a district court and provides universities with a right of action against the athlete agent for damages resulting from a violation of the Act.

BACKGROUND AND NEED FOR LEGISLATION

The multimillion-dollar value of professional athlete salaries, signing bonuses, and endorsement contracts has resulted in a proliferation of unscrupulous practices by some sports agents. Unscrupulous agents, or their representatives, are willing to break the rules in order to sign promising student athletes to an agency contract. Agents are willing to do this because the fees that accompany the representation of a professional athlete are considerable, and the consequences that the agent will suffer in comparison to the athlete or school are limited or non-existent.

Motivated largely by financial gain, unscrupulous agents have gone to extreme measures to represent promising student athletes with even a remote chance of becoming a professional athlete. These agents, or their cohorts—often known as “runners”—will use tactics including secret payments to the athlete, undisclosed payments to the family or friends of the athlete who may be in a position to influence the athlete, unrealistic promises, and even pressuring the athlete. In some cases, these agents have made the secret payments to student athletes or their families, and then blackmailed them into signing a contract with the threat that they would disclose the infraction of collegiate rules and threaten the student athlete’s eligibility. These egregious acts go unpunished due to the lack of a Federal law, disparate and sometime ineffective state laws, and the absence of any laws in many states.

The effect of a student athlete entering into an agency contract is generally a forfeiture of collegiate eligibility. The college or university may also be subject to various sanctions for violation of competition rules if contests were played with ineligible athletes. If this occurs, the economic impact to the school and the athlete can be substantial. Not only can a student athlete lose a scholarship, the university can be sanctioned with monetary penalties, loss of scholarships, forfeiture of contests, and loss of television revenue.

Currently there is no Federal law that directly addresses the actions of these agents. However, a majority of the states have a law to regulate athlete agents and/or their conduct, but to varying degree and specificity. Most recently the National Conference of Commissioners on Uniform State Laws passed the Uniform Athlete’s Agent Act (UAAA) in 2000 to provide uniform state laws addressing the conduct and practices of athlete agents, including registration of agents. It has since been adopted by sixteen states and introduced in the legislatures of twelve others. Of the states that have not enacted the UAAA, 18 have existing athlete agent laws while sixteen have no law that directly addresses athlete agent conduct. H.R. 361 will provide remedies to protect student athletes and the educational institutions, particularly in those states with no existing law addressing athlete agent conduct.

HEARINGS

The Committee on Energy and Commerce has not held hearings on the legislation.

COMMITTEE CONSIDERATION

On Wednesday, January 29, 2003, the Full Committee on Energy and Commerce met in open markup session and ordered H.R. 361 favorably reported to the House, without amendment, by a voice vote, a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 361 reported. A motion by Mr. Tauzin to order H.R. 361 reported to the House, without amendment, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has not held oversight or legislative hearings on this legislation.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal of H.R. 361 is to define the prohibited conduct employed by individuals to entice or solicit student athletes to enter into an agency contract, whether it is a written or oral agreement, as well as require written disclosure to the student athlete prior to signing a contract and to the educational institution after a contract has been entered.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 361, the Sports Agent Responsibility and Trust Act, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, January 31, 2003.

Hon. W.J. "BILLY" TAUZIN,
*Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 361, the Sports Agent Responsibility and Trust Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Ken Johnson (for federal costs), Victoria Heid Hall (for the state and local impact), and Paige Piper/Bach (for the private-sector impact).

Sincerely,

WILLIAM J. GAINER
(For Barry B. Anderson, Acting Director).

Enclosure.

H.R. 361—Sports Agent Responsibility and Trust Act

H.R. 361 would impose certain restrictions on contracts between sports agents and student athletes. For example, the bill would prohibit sports agents from soliciting such a contract by making false promises or offering gifts. These new rules would be enforced by the Federal Trade Commission (FTC) through civil penalties and by the states.

CBO estimates that enacting H.R. 361 would not have a significant impact on the federal budget. Based on information from the FTC, CBO expects that enforcement of the bill would occur mostly at the state level. Therefore, CBO expects that any increase in civil penalties resulting from the enactment of H.R. 361 would be insignificant. (Such penalties are recorded in the budget as revenues). Similarly, we estimate that implementing H.R. 361 would increase the FTC's costs by less than \$500,000 annually, assuming the availability of appropriated funds.

H.R. 361 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

H.R. 361 would impose private-sector mandates as defined by UMRA on certain sports agents and student athletes. The bill would prohibit a sports agent from providing anything of value to a student athlete or anyone associated with the athlete before entering into a contract. An agent also would be required to provide a student athlete with a specific disclosure document before entering into an agency contract and could not predate or postdate such a contract. The bill would require a student athlete, or the athlete's parents or legal guardian if the student is under the age of 18, to sign the disclosure document prior to entering into an agency contract. In addition, the bill would require the sports agent and student athlete to each inform the student's educational institution within a specific time frame that the athlete has entered into an agency contract. Based on information from government sources, CBO estimates that the direct cost of those mandates would fall well below the annual threshold established by UMRA for private-

sector mandates (\$117 million in 2003, adjusted annually for inflation).

The CBO staff contacts for this estimate are Ken Johnson (for federal costs), Victoria Heid Hall (for the state and local impact), and Paige Piper/Bach (for the private-sector impact). The estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 designates the legislation as the "Sports Agents Trust and Responsibility Act."

Section 2. Definitions

Section 2 provides definitions for terms incorporated throughout H.R. 361.

Section 3. Regulation of unfair and deceptive acts and practices in connection with the contact between an athlete agent and a student athlete

Section 3 provides for the regulation of conduct between an athlete agent and a student athlete. Subsection (a) defines prohibited conduct for an athlete agent to engage in order to solicit or recruit a student athlete to enter into an agency contract. The legislation makes it unlawful for the athlete agent to give materially false or misleading information, to make materially false promises or representations, or to provide anything of value to the student athlete or anyone associated with the student athlete before he or she signs an agency contract. Additionally, an athlete agent is prohibited from entering into an agency contract with the student athlete without providing the student the written disclosure proscribed by the Act and from either predating or postdating the contract.

Subsection (b) proscribes the terms of the disclosure requirements the athlete agent must provide to the student athlete, or to the student athlete's parent or guardian, and requires the signature of the student athlete, or the student athlete's parent or guardian, prior to entering into the agency contract.

Subsection (b)(3) provides the required language of the disclosure document.

Section 4. Enforcement

Section 4 authorizes the FTC to treat a violation of the Act as a violation of FTC rules defining an unfair and deceptive act or practice under section 18(a)(1)(B) of the FTC Act. This section authorizes the FTC to enforce the Act in the same manner and with the same powers and duties it has under the FTC Act.

Section 5. Actions by states

Section 5 provides the authority and parameters for a state to bring civil action against a violator of the Act. A state attorney general may bring civil action against any person in practice that violates any regulation of the Commission prescribed under section 3 of this Act in Federal district court in order to: (1) enjoin that practice; (2) enforce compliance with the regulation; (3) obtain damage, restitution, or other compensation; or (4) obtain other relief as the court may consider appropriate.

An attorney of the state filing an action under this Act must first provide a written notice of the action and a copy of the complaint to the FTC, unless it is not feasible in which case it must be provided to the FTC at the same time as the action is filed.

Subsection (b) provides the FTC with the authority to intervene in any action brought by a state under this Act. If the Commission intervenes, it maintains the right to be heard and the right to file a petition for appeal.

Subsection (c) provides that an action brought under subsection (a) by an attorney general shall not prevent the attorney general from exercising the powers provided by any other laws of the state.

Subsection (d) stipulates that no state may institute an action under subsection (a) while an action instituted by or on behalf of the Commission is pending.

Subsection (e) provides that an action brought by an attorney general of a state under subsection (a) may be brought in a district court of the United States that meets the venue requirements.

Subsection (f) provides the terms under which process may be served in an action brought under subsection (a).

Section 6. Protection of the educational institution

Section 6 provides safeguards and remedies for educational institutions.

Subsection (a) provides for written notification by the student athlete, and the athlete agent, to the athletic director or appropriate individual responsible for athletic programs of the educational institution. The notification that an agency contract has been entered into must be within 72 hours after entering into the contract or before the next athletic contest in which the student athlete may participate, whichever occurs first.

Subsection (b) provides an educational institution with civil remedy, including a right of action against an athlete agent for damages resulting from a violation of this Act.

Section 7. Sense of Congress

Section 7 expresses the sense of Congress that the States should enact the Uniform Athlete Agent Act of 2000 to protect student athletes and the integrity of amateur sports from unscrupulous sports agents.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation does not amend any existing Federal statute.



DOCUMENT NO. 3

SPORTS AGENT RESPONSIBILITY AND TRUST ACT

JUNE 2, 2003.—Ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 361]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 361) to designate certain conduct by sports agents relating to the signing of contracts with student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

	Page
The Amendment	1
Purpose and Summary	4
Background and Need for the Legislation	4
Hearings	5
Committee Consideration	5
Vote of the Committee	6
Committee Oversight Findings	6
New Budget Authority and Tax Expenditures	6
Congressional Budget Office Cost Estimate	6
Performance Goals and Objectives	8
Constitutional Authority Statement	8
Section-by-Section Analysis and Discussion	8
Changes in Existing Law Made by the Bill, as Reported	9
Markup Transcript	9

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Sports Agent Responsibility and Trust Act".

SEC. 2. DEFINITIONS.

As used in this Act, the following definitions apply:

(1) **AGENCY CONTRACT.**—The term “agency contract” means an oral or written agreement in which a student athlete authorizes a person to negotiate or solicit on behalf of the student athlete a professional sports contract or an endorsement contract.

(2) **ATHLETE AGENT.**—The term “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, and does not include a spouse, parent, sibling, grandparent, or guardian of such student athlete, any legal counsel for purposes other than that of representative agency, or an individual acting solely on behalf of a professional sports team or professional sports organization.

(3) **ATHLETIC DIRECTOR.**—The term “athletic director” means an individual responsible for administering the athletic program of an educational institution or, in the case that such program is administered separately, the athletic program for male students or the athletic program for female students, as appropriate.

(4) **COMMISSION.**—The term “Commission” means the Federal Trade Commission.

(5) **ENDORSEMENT CONTRACT.**—The term “endorsement contract” means an agreement under which a student athlete is employed or receives consideration for the use by the other party of that individual’s person, name, image, or likeness in the promotion of any product, service, or event.

(6) **INTERCOLLEGIATE SPORT.**—The term “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 college athletics.

(7) **PROFESSIONAL SPORTS CONTRACT.**—The term “professional sports 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.

(8) **STATE.**—The term “State” includes 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.

(9) **STUDENT ATHLETE.**—The term “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. An individual who is permanently ineligible to participate in a particular intercollegiate sport is not a student athlete for purposes of that sport.

SEC. 3. REGULATION OF UNFAIR AND DECEPTIVE ACTS AND PRACTICES IN CONNECTION WITH THE CONTACT BETWEEN AN ATHLETE AGENT AND A STUDENT ATHLETE.

(a) **CONDUCT PROHIBITED.**—It is unlawful for an athlete agent to—

(1) directly or indirectly recruit or solicit a student athlete to enter into an agency contract, by—

(A) giving any false or misleading information or making a false promise or representation; or

(B) providing anything of value to a student athlete or anyone associated with the student athlete before the student athlete enters into an agency contract, including any consideration in the form of a loan, or acting in the capacity of a guarantor or co-guarantor for any debt;

(2) enter into an agency contract with a student athlete without providing the student athlete with the disclosure document described in subsection (b); or

(3) predate or postdate an agency contract.

(b) **REQUIRED DISCLOSURE BY ATHLETE AGENTS TO STUDENT ATHLETES.**—

(1) **IN GENERAL.**—In conjunction with the entering into of an agency contract, an athlete agent shall provide to the student athlete, or, if the student athlete is under the age of 18, to such student athlete’s parent or legal guardian, a disclosure document that meets the requirements of this subsection. Such disclosure document is separate from and in addition to any disclosure which may be required under State law.

(2) **SIGNATURE OF STUDENT ATHLETE.**—The disclosure document must be signed by the student athlete, or, if the student athlete is under the age of 18, by such student athlete’s parent or legal guardian, prior to entering into the agency contract.

(3) **REQUIRED LANGUAGE.**—The disclosure document must contain, in close proximity to the signature of the student athlete, or, if the student athlete is under the age of 18, the signature of such student athlete’s parent or legal guardian, a conspicuous notice in boldface type stating: “Warning to Student Athlete: If you agree orally or in writing to be represented by an agent now or in the future you may lose your eligibility to compete as a student athlete in

your sport. Within 72 hours after entering into this contract or before the next athletic event in which you are eligible to participate, whichever occurs first, both you and the agent by whom you are agreeing to be represented must notify the athletic director of the educational institution at which you are enrolled, or other individual responsible for athletic programs at such educational institution, that you have entered into an agency contract.”.

SEC. 4. ENFORCEMENT.

(a) **UNFAIR OR DECEPTIVE ACT OR PRACTICE.**—A violation of this Act shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(b) **ACTIONS BY THE COMMISSION.**—The Commission shall enforce this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act.

SEC. 5. ACTIONS BY STATES.

(a) IN GENERAL.—

(1) **CIVIL ACTIONS.**—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any athlete agent in a practice that violates section 3 of this Act, the State may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—

(A) enjoin that practice;

(B) enforce compliance with this Act; or

(C) obtain damage, restitution, or other compensation on behalf of residents of the State.

(2) NOTICE.—

(A) **IN GENERAL.**—Before filing an action under paragraph (1), the attorney general of the State involved shall provide to the Commission—

(i) written notice of that action; and

(ii) a copy of the complaint for that action.

(B) **EXEMPTION.**—Subparagraph (A) shall not apply with respect to the filing of an action by an attorney general of a State under this subsection, if the attorney general determines that it is not feasible to provide the notice described in that subparagraph before filing of the action. In such case, the attorney general of a State shall provide notice and a copy of the complaint to the Commission at the same time as the attorney general files the action.

(b) INTERVENTION.—

(1) **IN GENERAL.**—On receiving notice under subsection (a)(2), the Commission shall have the right to intervene in the action that is the subject of the notice.

(2) **EFFECT OF INTERVENTION.**—If the Commission intervenes in an action under subsection (a), it shall have the right—

(A) to be heard with respect to any matter that arises in that action; and

(B) to file a petition for appeal.

(c) **CONSTRUCTION.**—For purposes of bringing any civil action under subsection (a), nothing in this title shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

(1) conduct investigations;

(2) administer oaths or affirmations; or

(3) compel the attendance of witnesses or the production of documentary and other evidence.

(d) **ACTIONS BY THE COMMISSION.**—In any case in which an action is instituted by or on behalf of the Commission for a violation of section 3, no State may, during the pendency of that action, institute an action under subsection (a) against any defendant named in the complaint in that action.

(e) **VENUE.**—Any action brought under subsection (a) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

(f) **SERVICE OF PROCESS.**—In an action brought under subsection (a), process may be served in any district in which the defendant—

- (1) is an inhabitant; or
- (2) may be found.

SEC. 6. PROTECTION OF EDUCATIONAL INSTITUTION.

(a) **NOTICE REQUIRED.**—Within 72 hours after entering into an agency contract or before the next athletic event in which the student athlete may participate, whichever occurs first, the athlete agent and the student athlete shall each inform the athletic director of the educational institution at which the student athlete is enrolled, or other individual responsible for athletic programs at such educational institution, that the student athlete has entered into an agency contract, and the athlete agent shall provide the athletic director with notice in writing of such a contract.

(b) **CIVIL REMEDY.**—

(1) **IN GENERAL.**—An educational institution has a right of action against an athlete agent for damages caused by a violation of this Act.

(2) **DAMAGES.**—Damages of an educational institution may include and are limited to actual losses and expenses incurred because, as a result of the conduct of the athlete agent, the educational institution was injured by a violation of this Act 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 actions likely to be imposed by such an association or conference.

(3) **COSTS AND ATTORNEYS FEES.**—In an action taken under this section, the court may award to the prevailing party costs and reasonable attorneys fees.

(4) **EFFECT ON OTHER RIGHTS, REMEDIES AND DEFENSES.**—This section does not restrict the rights, remedies, or defenses of any person under law or equity.

SEC. 7. LIMITATION.

Nothing in this Act shall be construed to prohibit an individual from seeking any remedies available under existing Federal or State law or equity.

SEC. 8. SENSE OF CONGRESS.

It is the sense of Congress that States should enact the Uniform Athlete Agents Act of 2000 drafted by the National Conference of Commissioners on Uniform State Laws, to protect student athletes and the integrity of amateur sports from unscrupulous sports agents. In particular, it is the sense of Congress that States should enact the provisions relating to the registration of sports agents, the required form of contract, the right of the student athlete to cancel an agency contract, the disclosure requirements relating to record maintenance, reporting, renewal, notice, warning, and security, and the provisions for reciprocity among the States.

PURPOSE AND SUMMARY

The purpose of H.R. 361, the “Sports Agent Responsibility and Trust Act,” is to designate certain conduct by sports agents relating to the signing of contracts with student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission (FTC). It provides for a cause of action for economic damages to be sought by either the FTC, the attorney general for the State of occurrence, or the educational institution harmed.

BACKGROUND AND NEED FOR THE LEGISLATION

The multi-million dollar value of professional athlete salaries, signing bonuses, and endorsement contracts has produced a proliferation of questionable ethical practices by some sports agents. Unscrupulous agents, or their representatives, are willing to break the rules in order to sign promising student athletes to a representational contract because the fees that accompany the representation of a professional athlete are considerable, and the agent will risk little in comparison to the athlete or school.

Motivated largely by financial gain, unscrupulous agents have gone to extreme measures with promising student athletes with even a remote chance of becoming a professional athlete. However,

whether a college athlete will succeed professionally is highly speculative. It has been estimated that an National Collegiate Athletic Association (NCAA) athlete has little more than a 1-percent chance of making a professional team, even in a backup role.¹ These agents, or their associates—often known as “runners”—will use tactics including secret payments to the athlete, undisclosed payments to the family or friends of the athlete who may be in a position to influence him or her, unrealistic promises, and even pressuring the athlete through intimidation and threats. In some cases, these agents have made secret payments to student athletes or their families, and then blackmailed them into signing a contract with the threat that they would disclose the violation of collegiate rules thus jeopardizing the student’s competitive eligibility. These acts go unpunished due to disparate, ineffective, or in some cases, a complete absence of State laws.

A student athlete entering into an oral or written agency contract generally forfeits collegiate eligibility.² In addition, the college or university may be subject to various sanctions for violation of competition rules if contests were played with ineligible athletes. If this occurs, the economic impact to the school and the athlete can be substantial. Not only can a student athlete lose a scholarship, the university can be sanctioned with monetary penalties, loss of scholarships, forfeiture of contests, and loss of television revenue.

Currently, there is no Federal law that directly addresses the actions of these agents, although a majority of the States do regulate—in varying degrees—athlete agents and their conduct. Most recently, the National Conference of Commissioners on Uniform State Laws passed the Uniform Athlete’s Agent Act (UAAA) in 2000 addressing the conduct, practices, and registration of athlete agents. H.R. 361 will provide remedies to protect student athletes and the educational institutions, particularly in those States with no existing law addressing athlete agent conduct.

HEARINGS

On May 15, 2003, the Subcommittee on Commercial and Administrative Law held a hearing on H.R. 361, at which Congressman Bart Gordon, Congressman Tom Osborne, and sports agent Scott Boras testified. In addition, written testimony was provided by the National Collegiate Athletic Association.

COMMITTEE CONSIDERATION

On May 15, 2003, the Subcommittee on Commercial and Administrative Law marked up the bill and ordered it favorably reported with an amendment to the full Committee. The amendment, offered by Chairman Cannon, made clarifying revisions to the bill. This amendment, which was adopted by voice vote, does the following: (1) clarifies the right of an individual student athlete to have available legal counsel outside of the realm of representative agency; (2) gives additional emphasis to the provision on the use of loans or co-signing of debts for the student athlete or those asso-

¹ NCAA Online, *Estimated Probability of Competing in Athletics Beyond the High School Inter-scholastic Level* (Visited May 13, 2003) <<http://www.ncaa.org/research/prob—of—competing/>>.

² *Id.*, *NCAA Regulations Related to Agents and Other Amateurism Provisions*, Sub II (Visited May 13, 2003) <<http://www1.ncaa.org/membership/enforcement/agents/agentPacket#Bylaws>>.

ciated with him in anticipation of future agency representation of that athlete; (3) strikes overly broad language relating to court remedies; and (4) specifies that the bill does not prohibit an individual from seeking any remedies available to them under existing State law or equity. Mr. Cannon's amendment was adopted by voice vote.

On May 21, 2003, the Committee met in open session and ordered favorably reported the bill H.R. 361, with amendment, by voice vote, a quorum being present. At the full Committee markup, Mr. Watt offered an amendment that clarified that nothing in the bill prohibits an individual from seeking any remedy under Federal law. Mr. Watt's amendment was adopted by voice vote.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of the rule XIII of the Rules of the House of Representatives, the Committee notes that no rollcall votes occurred during the Committee's consideration of H.R. 361.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 361, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 28, 2003.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 361, the Sports Agent Responsibility and Trust Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Julie Middleton (for Federal costs), who can be reached at 226-2860, Victoria Heid Hall and Gregory Waring (for the state and local impact), who can be

reached at 225-2330, and Paige Piper/Bach (for the private-sector impact), who can be reached at 226-2940.

Sincerely,

DOUGLAS HOLTZ-EAKIN.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 361—Sports Agent Responsibility and Trust Act.

H.R. 361 would impose certain restrictions on contracts between sports agents and student athletes. For example, the bill would prohibit sports agents from soliciting such a contract by making false promises or offering gifts. These new rules would be enforced by the Federal Trade Commission (FTC) through civil penalties and by the States.

CBO estimates that enacting H.R. 361 would not have a significant impact on the Federal budget. Based on information from the FTC, CBO expects that enforcement of the bill would occur mostly at the State level. Therefore, CBO expects that any increase in civil penalties resulting from the enactment of H.R. 361 would be insignificant. (Such penalties are recorded in the budget as revenues.) Similarly, we estimate that implementing H.R. 361 would increase the FTC's costs by less than \$500,000 annually, assuming the availability of appropriated funds.

H.R. 361 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on State, local, or tribal governments.

H.R. 361 would impose private-sector mandates as defined by UMRA on certain sports agents and student athletes. The bill would prohibit a sports agent from providing anything of value to a student athlete or anyone associated with the athlete before entering into a contract. An agent also would be required to provide a student athlete with a specific disclosure document before entering into an agency contract and could not predate or postdate such a contract. The bill would require a student athlete, or the athlete's parents or legal guardian if the student is under the age of 18, to sign the disclosure document prior to entering into an agency contract. In addition, the bill would require the sports agent and student athlete to each inform the student's educational institution within a specific time frame that the athlete has entered into an agency contract. Based on information from government sources, CBO estimates that the direct cost of those mandates would fall well below the annual threshold established by UMRA for private-sector mandates (\$117 million in 2003, adjusted annually for inflation).

On January 31, 2003, CBO transmitted a cost estimate for H.R. 361 as ordered reported by the House Committee on Energy and Commerce on January 29, 2003. The two versions of the bill are similar, and the cost estimates are identical.

The CBO staff contacts for this estimate are Julie Middleton (for Federal costs), who can be reached at 226-2860, Victoria Heid Hall and Gregory Waring (for the State and local impact), who can be reached at 225-2330, and Paige Piper/Bach (for the private-sector impact), who can be reached at 226-2940. The estimate was ap-

proved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

H.R. 361 does not authorize funding. Therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives is inapplicable.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1 provides that this Act may be cited as the "Sports Agent Responsibility and Trust Act."

Section 2 defines terms used within the bill. Of special note is the definition of "athlete agent," which is limited to those who are representing the athlete under an agency contract, and is not meant to deter other legal counsel or assistance.

Section 3 defines conduct prohibited by an athlete agent. Prohibited acts include giving false or misleading information; providing anything of value to the athlete or anyone associated with the athlete before entering into a representative contract; requiring disclosure at the time of signing into the contract that the athlete may forfeit NCAA eligibility as a result of the signing of the contract; and the predating or postdating of the contract.

Section 4 defines a violation of this Act as an unfair or deceptive act or practice, and as such, a violation enforceable under the Federal Trade Commission guidelines relating to such a violation.

Section 5 gives an attorney general of a State where this action occurs standing to enforce this Act. The attorney general may file a civil action on behalf of the inhabitants of the State to enjoin the actions, enforce compliance with this act, and obtain damages, restitution, or other compensation on behalf of the residents of the State.

Section 6 gives protection to educational institutions which are damaged as a result of the conduct this act seeks to prevent. If proper notice, which should occur within 72 hours after signing an agency agreement or the next athletic event which the student athlete may participate in (whichever occurs first), is not given to the individual in charge of that university's athletic program, a violation of this act occurs. After such violation, the educational institution is given a civil remedy for the damages the institution suffered as a result of the non-disclosure.

Section 7 states that nothing in this act is meant to prohibit an individual from seeking any remedies available to them under existing State law or equity. Mr. Watt's amendment, which was adopted by the full Committee, extended this provision to existing Federal remedies.

Section 8 expresses the sense of Congress that States should enact the UAAA as drafted by the Uniform Conference of Commissioners on Uniform State Laws.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, the Committee notes H.R. 361 makes no changes to existing law.

MARKUP TRANSCRIPT
BUSINESS MEETING
WEDNESDAY, MAY 21, 2003

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:01 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. (Chairman of the Committee) presiding.

[Intervening business.]

Chairman SENSENBRENNER. The next item on the agenda is H.R. 361, the "Sports Agent Responsibility and Trust Act." The Chair recognizes the gentleman from Utah, Mr. Cannon, the Chairman of the Subcommittee on Commercial and Administrative Law, for a motion.

Mr. CANNON. The Subcommittee on Commercial and Administrative Law favorably reports the bill H.R. 361 with a single amendment in the nature of a substitute and urges—or moves its adoption by the full Committee.

Chairman SENSENBRENNER. Without objection, the bill will be considered as read and open for amendment at any point.

[The bill, H.R. 361, follows:]

108TH CONGRESS
1ST SESSION

H. R. 361

To designate certain conduct by sports agents relating to the signing of contracts with student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 27, 2003

Mr. GORDON (for himself, Mr. OSBORNE, Mr. DINGELL, Mr. BROWN of Ohio, Mr. LUCAS of Kentucky, Mr. SERRANO, Ms. NORTON, Mr. SIMMONS, Mr. DUNCAN, Mr. HAYES, Mr. WAMP, Mr. TOWNS, Mr. WILSON of South Carolina, Mr. MATHESON, Mr. ENGEL, Mr. RAMSTAD, Mr. RUSH, Ms. MCCARTHY of Missouri, Mr. LEACH, Mr. SHIMKUS, Mr. DEUTSCH, Mr. STEARNS, Mr. DOYLE, Mr. BURR, Mrs. CAPPS, Mr. PICKERING, and Mr. UPTON) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To designate certain conduct by sports agents relating to the signing of contracts with student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Sports Agent Respon-
5 sibility and Trust Act".

1 **SEC. 2. DEFINITIONS.**

2 As used in this Act, the following definitions apply:

3 (1) **AGENCY CONTRACT.**—The term “agency
4 contract” means an oral or written agreement in
5 which a student athlete authorizes a person to nego-
6 tiate or solicit on behalf of the student athlete a pro-
7 fessional sports contract or an endorsement contract.

8 (2) **ATHLETE AGENT.**—The term “athlete
9 agent” means an individual who enters into an agen-
10 cy contract with a student athlete, or directly or in-
11 directly recruits or solicits a student athlete to enter
12 into an agency contract, and does not include a
13 spouse, parent, sibling, grandparent, or guardian of
14 such student athlete, or an individual acting solely
15 on behalf of a professional sports team or profes-
16 sional sports organization.

17 (3) **ATHLETIC DIRECTOR.**—The term “athletic
18 director” means an individual responsible for admin-
19 istering the athletic program of an educational insti-
20 tution or, in the case that such program is adminis-
21 tered separately, the athletic program for male stu-
22 dents or the athletic program for female students, as
23 appropriate.

24 (4) **COMMISSION.**—The term “Commission”
25 means the Federal Trade Commission.

1 (5) ENDORSEMENT CONTRACT.—The term “en-
2 endorsement contract” means an agreement under
3 which a student athlete is employed or receives con-
4 sideration for the use by the other party of that in-
5 dividual’s person, name, image, or likeness in the
6 promotion of any product, service, or event.

7 (6) INTERCOLLEGIATE SPORT.—The term
8 “intercollegiate sport” means a sport played at the
9 collegiate level for which eligibility requirements for
10 participation by a student athlete are established by
11 a national association for the promotion or regula-
12 tion of college athletics.

13 (7) PROFESSIONAL SPORTS CONTRACT.—The
14 term “professional sports contract” means an agree-
15 ment under which an individual is employed, or
16 agrees to render services, as a player on a profes-
17 sional sports team, with a professional sports organi-
18 zation, or as a professional athlete.

19 (8) STATE.—The term “State” includes a State
20 of the United States, the District of Columbia, Puer-
21 to Rico, the United States Virgin Islands, or any
22 territory or insular possession subject to the jurisdic-
23 tion of the United States.

24 (9) STUDENT ATHLETE.—The term “student
25 athlete” means an individual who engages in, is eli-

1 gible to engage in, or may be eligible in the future
2 to engage in, any intercollegiate sport. An individual
3 who is permanently ineligible to participate in a par-
4 ticular intercollegiate sport is not a student athlete
5 for purposes of that sport.

6 **SEC. 3. REGULATION OF UNFAIR AND DECEPTIVE ACTS**
7 **AND PRACTICES IN CONNECTION WITH THE**
8 **CONTACT BETWEEN AN ATHLETE AGENT AND**
9 **A STUDENT ATHLETE.**

10 (a) **CONDUCT PROHIBITED.**—It is unlawful for an
11 athlete agent to—

12 (1) directly or indirectly recruit or solicit a stu-
13 dent athlete to enter into an agency contract, by—

14 (A) giving any false or misleading informa-
15 tion or making a false promise or representa-
16 tion; or

17 (B) providing anything of value to a stu-
18 dent athlete or anyone associated with the stu-
19 dent athlete before the student athlete enters
20 into an agency contract;

21 (2) enter into an agency contract with a stu-
22 dent athlete without providing the student athlete
23 with the disclosure document described in subsection
24 (b); or

25 (3) predate or postdate an agency contract.

1 (b) REQUIRED DISCLOSURE BY ATHLETE AGENTS
2 TO STUDENT ATHLETES.—

3 (1) IN GENERAL.—In conjunction with the en-
4 tering into of an agency contract, an athlete agent
5 shall provide to the student athlete, or, if the stu-
6 dent athlete is under the age of 18, to such student
7 athlete’s parent or legal guardian, a disclosure docu-
8 ment that meets the requirements of this subsection.
9 Such disclosure document is separate from and in
10 addition to any disclosure which may be required
11 under State law.

12 (2) SIGNATURE OF STUDENT ATHLETE.—The
13 disclosure document must be signed by the student
14 athlete, or, if the student athlete is under the age of
15 18, by such student athlete’s parent or legal guard-
16 ian, prior to entering into the agency contract.

17 (3) REQUIRED LANGUAGE.—The disclosure doc-
18 ument must contain, in close proximity to the signa-
19 ture of the student athlete, or, if the student athlete
20 is under the age of 18, the signature of such student
21 athlete’s parent or legal guardian, a conspicuous no-
22 tice in boldface type stating: “Warning to Student
23 Athlete: If you agree orally or in writing to be rep-
24 resented by an agent now or in the future you may
25 lose your eligibility to compete as a student athlete

1 in your sport. Within 72 hours after entering into
2 this contract or before the next athletic event in
3 which you are eligible to participate, whichever oc-
4 curs first, both you and the agent by whom you are
5 agreeing to be represented must notify the athletic
6 director of the educational institution at which you
7 are enrolled, or other individual responsible for ath-
8 letic programs at such educational institution, that
9 you have entered into an agency contract.”.

10 **SEC. 4. ENFORCEMENT.**

11 (a) UNFAIR OR DECEPTIVE ACT OR PRACTICE.—A
12 violation of this Act shall be treated as a violation of a
13 rule defining an unfair or deceptive act or practice pre-
14 scribed under section 18(a)(1)(B) of the Federal Trade
15 Commission Act (15 U.S.C. 57a(a)(1)(B)).

16 (b) ACTIONS BY THE COMMISSION.—The Commis-
17 sion shall enforce this Act in the same manner, by the
18 same means, and with the same jurisdiction, powers, and
19 duties as though all applicable terms and provisions of the
20 Federal Trade Commission Act (15 U.S.C. 41 et seq.)
21 were incorporated into and made a part of this Act.

22 **SEC. 5. ACTIONS BY STATES.**

23 (a) IN GENERAL.—

24 (1) CIVIL ACTIONS.—In any case in which the
25 attorney general of a State has reason to believe

1 that an interest of the residents of that State has
2 been or is threatened or adversely affected by the
3 engagement of any athlete agent in a practice that
4 violates section 3 of this Act, the State may bring
5 a civil action on behalf of the residents of the State
6 in a district court of the United States of appropriate jurisdiction to—

8 (A) enjoin that practice;

9 (B) enforce compliance with this Act;

10 (C) obtain damage, restitution, or other
11 compensation on behalf of residents of the
12 State; or

13 (D) obtain such other relief as the court
14 may consider to be appropriate.

15 (2) NOTICE.—

16 (A) IN GENERAL.—Before filing an action
17 under paragraph (1), the attorney general of
18 the State involved shall provide to the
19 Commission—

20 (i) written notice of that action; and

21 (ii) a copy of the complaint for that
22 action.

23 (B) EXEMPTION.—Subparagraph (A) shall
24 not apply with respect to the filing of an action
25 by an attorney general of a State under this

1 subsection, if the attorney general determines
2 that it is not feasible to provide the notice de-
3 scribed in that subparagraph before filing of the
4 action. In such case, the attorney general of a
5 State shall provide notice and a copy of the
6 complaint to the Commission at the same time
7 as the attorney general files the action.

8 (b) INTERVENTION.—

9 (1) IN GENERAL.—On receiving notice under
10 subsection (a)(2), the Commission shall have the
11 right to intervene in the action that is the subject
12 of the notice.

13 (2) EFFECT OF INTERVENTION.—If the Com-
14 mission intervenes in an action under subsection (a),
15 it shall have the right—

16 (A) to be heard with respect to any matter
17 that arises in that action; and

18 (B) to file a petition for appeal.

19 (c) CONSTRUCTION.—For purposes of bringing any
20 civil action under subsection (a), nothing in this title shall
21 be construed to prevent an attorney general of a State
22 from exercising the powers conferred on the attorney gen-
23 eral by the laws of that State to—

24 (1) conduct investigations;

25 (2) administer oaths or affirmations; or

1 (3) compel the attendance of witnesses or the
2 production of documentary and other evidence.

3 (d) ACTIONS BY THE COMMISSION.—In any case in
4 which an action is instituted by or on behalf of the Com-
5 mission for a violation of section 3, no State may, during
6 the pendency of that action, institute an action under sub-
7 section (a) against any defendant named in the complaint
8 in that action—

9 (e) VENUE.—Any action brought under subsection
10 (a) may be brought in the district court of the United
11 States that meets applicable requirements relating to
12 venue under section 1391 of title 28, United States Code.

13 (f) SERVICE OF PROCESS.—In an action brought
14 under subsection (a), process may be served in any district
15 in which the defendant—

16 (1) is an inhabitant; or

17 (2) may be found.

18 **SEC. 6. PROTECTION OF EDUCATIONAL INSTITUTION.**

19 (a) NOTICE REQUIRED.—Within 72 hours after en-
20 tering into an agency contract or before the next athletic
21 event in which the student athlete may participate, which-
22 ever occurs first, the athlete agent and the student athlete
23 shall each inform the athletic director of the educational
24 institution at which the student athlete is enrolled, or
25 other individual responsible for athletic programs at such

1 educational institution, that the student athlete has en-
2 tered into an agency contract, and the athlete agent shall
3 provide the athletic director with notice in writing of such
4 a contract.

5 (b) CIVIL REMEDY.—

6 (1) IN GENERAL.—An educational institution
7 has a right of action against an athlete agent for
8 damages caused by a violation of this Act.

9 (2) DAMAGES.—Damages of an educational in-
10 stitution may include losses and expenses incurred
11 because, as a result of the conduct of the athlete
12 agent, the educational institution was injured by a
13 violation of this Act or was penalized, disqualified,
14 or suspended from participation in athletics by a na-
15 tional association for the promotion and regulation
16 of athletics, by an athletic conference, or by reason-
17 able self-imposed disciplinary action taken to miti-
18 gate actions likely to be imposed by such an associa-
19 tion or conference.

20 (3) COSTS AND ATTORNEYS FEES.—In an ac-
21 tion taken under this section, the court may award
22 to the prevailing party costs and reasonable attor-
23 neys fees.

24 (4) EFFECT ON OTHER RIGHTS, REMEDIES AND
25 DEFENSES.—This section does not restrict the

1 rights, remedies, or defenses of any person under
2 law or equity.

3 **SEC. 7. SENSE OF CONGRESS.**

4 It is the sense of Congress that States should enact
5 the Uniform Athlete Agents Act of 2000 drafted by the
6 National Conference of Commissioners on Uniform State
7 Laws, to protect student athletes and the integrity of ama-
8 teur sports from unscrupulous sports agents. In par-
9 ticular, it is the sense of Congress that States should enact
10 the provisions relating to the registration of sports agents,
11 the required form of contract, the right of the student ath-
12 lete to cancel an agency contract, the disclosure require-
13 ments relating to record maintenance, reporting, renewal,
14 notice, warning, and security, and the provisions for reci-
15 procity among the States.

○

Chairman SENSENBRENNER. And the Subcommittee amendment in the nature of a substitute, which the Members have before them, will be considered as read, considered as the original text for purposes of amendment, and open for amendment at any point.
[The amendment in the nature of a substitute follows:]

**SUBSTITUTE AMENDMENT TO H.R. 361
AS REPORTED BY THE SUBCOMMITTEE ON
COMMERCIAL AND ADMINISTRATIVE LAW**

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Sports Agent Respon-
3 sibility and Trust Act”.

4 **SEC. 2. DEFINITIONS.**

5 As used in this Act, the following definitions apply:

6 (1) **AGENCY CONTRACT.**—The term “agency
7 contract” means an oral or written agreement in
8 which a student athlete authorizes a person to nego-
9 tiate or solicit on behalf of the student athlete a pro-
10 fessional sports contract or an endorsement contract.

11 (2) **ATHLETE AGENT.**—The term “athlete
12 agent” means an individual who enters into an agen-
13 cy contract with a student athlete, or directly or in-
14 directly recruits or solicits a student athlete to enter
15 into an agency contract, and does not include a
16 spouse, parent, sibling, grandparent, or guardian of
17 such student athlete, any legal counsel for purposes
18 other than that of representative agency, or an indi-
19 vidual acting solely on behalf of a professional sports
20 team or professional sports organization.

21 (3) **ATHLETIC DIRECTOR.**—The term “athletic
22 director” means an individual responsible for admin-

1 istering the athletic program of an educational insti-
2 tution or, in the case that such program is adminis-
3 tered separately, the athletic program for male stu-
4 dents or the athletic program for female students, as
5 appropriate.

6 (4) COMMISSION.—The term “Commission”
7 means the Federal Trade Commission.

8 (5) ENDORSEMENT CONTRACT.—The term “en-
9 dorsement contract” means an agreement under
10 which a student athlete is employed or receives con-
11 sideration for the use by the other party of that in-
12 dividual’s person, name, image, or likeness in the
13 promotion of any product, service, or event.

14 (6) INTERCOLLEGIATE SPORT.—The term
15 “intercollegiate sport” means a sport played at the
16 collegiate level for which eligibility requirements for
17 participation by a student athlete are established by
18 a national association for the promotion or regula-
19 tion of college athletics.

20 (7) PROFESSIONAL SPORTS CONTRACT.—The
21 term “professional sports contract” means an agree-
22 ment under which an individual is employed, or
23 agrees to render services, as a player on a profes-
24 sional sports team, with a professional sports organi-
25 zation, or as a professional athlete.

1 (8) STATE.—The term “State” includes a State
2 of the United States, the District of Columbia, Puer-
3 to Rico, the United States Virgin Islands, or any
4 territory or insular possession subject to the jurisdic-
5 tion of the United States.

6 (9) STUDENT ATHLETE.—The term “student
7 athlete” means an individual who engages in, is eli-
8 gible to engage in, or may be eligible in the future
9 to engage in, any intercollegiate sport. An individual
10 who is permanently ineligible to participate in a par-
11 ticular intercollegiate sport is not a student athlete
12 for purposes of that sport.

13 **SEC. 3. REGULATION OF UNFAIR AND DECEPTIVE ACTS**
14 **AND PRACTICES IN CONNECTION WITH THE**
15 **CONTACT BETWEEN AN ATHLETE AGENT AND**
16 **A STUDENT ATHLETE.**

17 (a) CONDUCT PROHIBITED.—It is unlawful for an
18 athlete agent to—

19 (1) directly or indirectly recruit or solicit a stu-
20 dent athlete to enter into an agency contract, by—

21 (A) giving any false or misleading informa-
22 tion or making a false promise or representa-
23 tion; or

24 (B) providing anything of value to a stu-
25 dent athlete or anyone associated with the stu-

1 dent athlete before the student athlete enters
2 into an agency contract, including any consider-
3 ation in the form of a loan, or acting in the ca-
4 pacity of a guarantor or co-guarantor for any
5 debt;

6 (2) enter into an agency contract with a stu-
7 dent athlete without providing the student athlete
8 with the disclosure document described in subsection
9 (b); or

10 (3) predate or postdate an agency contract.

11 (b) **REQUIRED DISCLOSURE BY ATHLETE AGENTS**
12 **TO STUDENT ATHLETES.—**

13 (1) **IN GENERAL.—**In conjunction with the en-
14 tering into of an agency contract, an athlete agent
15 shall provide to the student athlete, or, if the stu-
16 dent athlete is under the age of 18, to such student
17 athlete's parent or legal guardian, a disclosure docu-
18 ment that meets the requirements of this subsection.
19 Such disclosure document is separate from and in
20 addition to any disclosure which may be required
21 under State law.

22 (2) **SIGNATURE OF STUDENT ATHLETE.—**The
23 disclosure document must be signed by the student
24 athlete, or, if the student athlete is under the age of

1 18, by such student athlete's parent or legal guard-
2 ian, prior to entering into the agency contract.

3 (3) **REQUIRED LANGUAGE.**—The disclosure doc-
4 ument must contain, in close proximity to the signa-
5 ture of the student athlete, or, if the student athlete
6 is under the age of 18, the signature of such student
7 athlete's parent or legal guardian, a conspicuous no-
8 tice in boldface type stating: "Warning to Student
9 Athlete: If you agree orally or in writing to be rep-
10 resented by an agent now or in the future you may
11 lose your eligibility to compete as a student athlete
12 in your sport. Within 72 hours after entering into
13 this contract or before the next athletic event in
14 which you are eligible to participate, whichever oc-
15 curs first, both you and the agent by whom you are
16 agreeing to be represented must notify the athletic
17 director of the educational institution at which you
18 are enrolled, or other individual responsible for ath-
19 letic programs at such educational institution, that
20 you have entered into an agency contract."

21 **SEC. 4. ENFORCEMENT.**

22 (a) **UNFAIR OR DECEPTIVE ACT OR PRACTICE.**—A
23 violation of this Act shall be treated as a violation of a
24 rule defining an unfair or deceptive act or practice pre-

1 scribed under section 18(a)(1)(B) of the Federal Trade
2 Commission Act (15 U.S.C. 57a(a)(1)(B)).

3 (b) ACTIONS BY THE COMMISSION.—The Commis-
4 sion shall enforce this Act in the same manner, by the
5 same means, and with the same jurisdiction, powers, and
6 duties as though all applicable terms and provisions of the
7 Federal Trade Commission Act (15 U.S.C. 41 et seq.)
8 were incorporated into and made a part of this Act.

9 **SEC. 5. ACTIONS BY STATES.**

10 (a) IN GENERAL.—

11 (1) CIVIL ACTIONS.—In any case in which the
12 attorney general of a State has reason to believe
13 that an interest of the residents of that State has
14 been or is threatened or adversely affected by the
15 engagement of any athlete agent in a practice that
16 violates section 3 of this Act, the State may bring
17 a civil action on behalf of the residents of the State
18 in a district court of the United States of appro-
19 priate jurisdiction to—

20 (A) enjoin that practice;

21 (B) enforce compliance with this Act; or

22 (C) obtain damage, restitution, or other
23 compensation on behalf of residents of the
24 State.

25 (2) NOTICE.—

1 (A) IN GENERAL.—Before filing an action
2 under paragraph (1), the attorney general of
3 the State involved shall provide to the
4 Commission—

5 (i) written notice of that action; and
6 (ii) a copy of the complaint for that
7 action.

8 (B) EXEMPTION.—Subparagraph (A) shall
9 not apply with respect to the filing of an action
10 by an attorney general of a State under this
11 subsection, if the attorney general determines
12 that it is not feasible to provide the notice de-
13 scribed in that subparagraph before filing of the
14 action. In such case, the attorney general of a
15 State shall provide notice and a copy of the
16 complaint to the Commission at the same time
17 as the attorney general files the action.

18 (b) INTERVENTION.—

19 (1) IN GENERAL.—On receiving notice under
20 subsection (a)(2), the Commission shall have the
21 right to intervene in the action that is the subject
22 of the notice.

23 (2) EFFECT OF INTERVENTION.—If the Com-
24 mission intervenes in an action under subsection (a),
25 it shall have the right—

1 (A) to be heard with respect to any matter
2 that arises in that action; and

3 (B) to file a petition for appeal.

4 (c) CONSTRUCTION.—For purposes of bringing any
5 civil action under subsection (a), nothing in this title shall
6 be construed to prevent an attorney general of a State
7 from exercising the powers conferred on the attorney gen-
8 eral by the laws of that State to—

9 (1) conduct investigations;

10 (2) administer oaths or affirmations; or

11 (3) compel the attendance of witnesses or the
12 production of documentary and other evidence.

13 (d) ACTIONS BY THE COMMISSION.—In any case in
14 which an action is instituted by or on behalf of the Com-
15 mission for a violation of section 3, no State may, during
16 the pendency of that action, institute an action under sub-
17 section (a) against any defendant named in the complaint
18 in that action—

19 (e) VENUE.—Any action brought under subsection
20 (a) may be brought in the district court of the United
21 States that meets applicable requirements relating to
22 venue under section 1391 of title 28, United States Code.

23 (f) SERVICE OF PROCESS.—In an action brought
24 under subsection (a), process may be served in any district
25 in which the defendant—

1 (1) is an inhabitant; or

2 (2) may be found.

3 **SEC. 6. PROTECTION OF EDUCATIONAL INSTITUTION.**

4 (a) NOTICE REQUIRED.—Within 72 hours after en-
5 tering into an agency contract or before the next athletic
6 event in which the student athlete may participate, which-
7 ever occurs first, the athlete agent and the student athlete
8 shall each inform the athletic director of the educational
9 institution at which the student athlete is enrolled, or
10 other individual responsible for athletic programs at such
11 educational institution, that the student athlete has en-
12 tered into an agency contract, and the athlete agent shall
13 provide the athletic director with notice in writing of such
14 a contract.

15 (b) CIVIL REMEDY.—

16 (1) IN GENERAL.—An educational institution
17 has a right of action against an athlete agent for
18 damages caused by a violation of this Act.

19 (2) DAMAGES.—Damages of an educational in-
20 stitution may include and are limited to actual losses
21 and expenses incurred because, as a result of the
22 conduct of the athlete agent, the educational institu-
23 tion was injured by a violation of this Act or was pe-
24 nalized, disqualified, or suspended from participation
25 in athletics by a national association for the pro-

1 motion and regulation of athletics, by an athletic
2 conference, or by reasonable self-imposed discipli-
3 nary action taken to mitigate actions likely to be im-
4 posed by such an association or conference.

5 (3) COSTS AND ATTORNEYS FEES.—In an ac-
6 tion taken under this section, the court may award
7 to the prevailing party costs and reasonable attor-
8 neys fees.

9 (4) EFFECT ON OTHER RIGHTS, REMEDIES AND
10 DEFENSES.—This section does not restrict the
11 rights, remedies, or defenses of any person under
12 law or equity.

13 **SEC. 7. LIMITATION.**

14 Nothing in this Act shall be construed to prohibit an
15 individual from seeking any remedies available under ex-
16 isting State law or equity.

17 **SEC. 8. SENSE OF CONGRESS.**

18 It is the sense of Congress that States should enact
19 the Uniform Athlete Agents Act of 2000 drafted by the
20 National Conference of Commissioners on Uniform State
21 Laws, to protect student athletes and the integrity of ama-
22 teur sports from unscrupulous sports agents. In par-
23 ticular, it is the sense of Congress that States should enact
24 the provisions relating to the registration of sports agents,
25 the required form of contract, the right of the student ath-

1 lete to cancel an agency contract, the disclosure require-
2 ments relating to record maintenance, reporting, renewal,
3 notice, warning, and security, and the provisions for reci-
4 procity among the States.

Chairman SENSENBRENNER. The Chair recognizes the gentleman from Utah, Mr. Cannon, to strike the last word.

Mr. CANNON. Thank you, Mr. Chairman.

The Subcommittee held a hearing on this bill on May 15th and reported the bill the same day. The Subcommittee adopted an amendment of a substitute with bipartisan support, clarifying a number of matters within the bill as well as specifically preserving the right of student athletes to seek individual redress from any contractual violations under existing State law or equity.

Mr. Chairman, this is an important piece of legislation and one which deserves the Committee's full support. H.R. 361 will address the interaction of sports agents with student athletes. It will give guidelines for sports agents to adhere to in the recruitment and allow the Federal Trade Commission or the attorney general of the State of occurrence to go after agents who do not adhere to the guidelines. Set out in this bill—that is, the guidelines set out in this bill.

In addition, it provides a cause of action for educational institutions against a sport agent whose actions result in making a player ineligible for collegiate competition. In an all too common sequence of unethical conduct, such agents often fail to properly notify the university, thus causing sanctions, forfeitures, or other penalties to the university for which it has no fault.

This bill is patterned after language in the Uniform Athlete Agents Act, which has been adopted by over 20 States. The need for a Federal solution is clear when one considers the interstate nature of collegiate athletics. Currently there is nothing to stop an unscrupulous sports agent from victim shopping—or victim forum shopping by waiting to approach star athletes in States with no appropriate enforcement tools, States where those actions can occur without fear of retribution or redress.

This bill does not indict the conduct of all sports agents. Not all are the Bob Sugars, as depicted in the movie "Jerry Maguire." The bill seeks to protect the often guileless student athlete from real-life consequences of dealing with the unscrupulous. H.R. 361 was originally referred to the Committee on Energy and Commerce, which reported this legislation by voice vote on January 29th. The Committee on Judiciary received a sequential referral, which expires on June 1.

Again, I urge the Committee to support this bill. Thank you, Mr. Chairman.

Chairman SENSENBRENNER. In the absence of Mr. Watt, does any Member of the minority wish to make an opening statement? If not, without objection, all Members may enter opening statements in the record at this point.

Are there amendments?

Ms. JACKSON LEE. Mr. Chairman?

Chairman SENSENBRENNER. Does Mr. Watt have an opening statement he'd like to make?

Mr. WATT. No, I don't have an opening statement. I have an amendment, though.

Chairman SENSENBRENNER. Okay.

Mr. WATT. Whenever you get to that point.

Chairman SENSENBRENNER. We're at that point now. The clerk will report the Watt amendment.

The CLERK. Mr. Chairman, I don't have a Watt amendment.

Mr. WATT. Right here.

Chairman SENSENBRENNER. The clerk will forbear.

The clerk will now report the Watt amendment.

The CLERK. Amendment to the amendment in the nature of a substitute to H.R.—

Mr. WATT. Mr. Chairman, I ask unanimous consent that the amendment be considered as read.

The CLERK.—361 offered by Mr.—

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

[Mr. Watt's amendment follows:]

**AMENDMENT TO SUBSTITUTE AMENDMENT TO H.R. 361
OFFERED BY MR. WATT**

On page 10, line 16, before "State" insert "Federal or".

Chairman SENSENBRENNER. The gentleman from North Carolina is recognized for 5 minutes.

Mr. WATT. I thank the Chairman, and I apologize to the Chairman for being in and out. But there are two markups going on. Fortunately, they're all in the same hall, and I'm trying to run back and forth.

The question came up in the Subcommittee about whether individuals have a cause of action under this bill as opposed to just the FTC and universities who may be adversely impacted by the acts of agents. And Mr. Cannon clarified that partially in his amendment to the bill which was passed in the Subcommittee during our Subcommittee consideration. Unfortunately, Mr. Cannon's amendment makes it explicit that whatever individual rights a person has under State law or equity are protected, but he didn't—his amendment didn't make reference to Federal law. And I'm not sure that there are causes of action under the Federal law other than with the FTC. But after looking at this quite extensively, I thought—and I think everybody agrees—that we should not be wiping out any individual causes of action that individual claimants might have as a result of passing this legislation, which is designed to advance accountability on the part of sports agents.

And so this simply makes it clear that if there are other potential Federal causes of action other than under this bill, individual student athletes would have the right to pursue them also, and I will yield to Mr. Cannon if he is trying to get me to yield.

Mr. CANNON. Thank you. I was actually just wanting to let you finish before I asked a question.

I'm not sure whether or not to oppose or accept the amendment. I can't think of anything—a Federal action that exists now that would favor students. Do you have something in mind when you—

Mr. WATT. No, I don't. But I guess, in effect, what we're saying is if there is any individual cause of action under Federal law, we

don't want to foreclose that. We're not creating a cause of action, but we want to make it explicit that we're not foreclosing the cause of action.

Mr. CANNON. If the gentleman would yield further, it is my sense that what we're doing with this section is to not limit, and I don't have a sense of the implications of adding Federal, except to suggest that we don't want to—we don't want to federalize more than we're trying to—we're trying to be very narrow in what we're doing with this and not expand Federal actions or causes of action.

Mr. WATT. And I absolutely agree with the gentleman, and if the gentleman will take a look at his language that he inserted at the Subcommittee level with the amendment that you offered, on page 10 you say, "Nothing in this Act shall be construed to prohibit an individual from seeking any remedies available under existing State law or equity."

All we're doing is applying the same thing to any remedies that might—

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. WATT.—exist under Federal law.

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. WATT. I'm happy to yield to the Chairman.

Chairman SENSENBRENNER. I think the amendment is a logical one, and I'm particularly concerned if "Federal" is left out that a diversity suit against a sports agent that did not reside in the State where the student or the educational institution resided would end up being precluded from going into Federal court. So I think the gentleman's amendment is a constructive addition.

Mr. WATT. Well, I thank the gentleman, and the gentleman knows—

Mr. CANNON. Would the gentleman—

Mr. WATT.—support getting all these things into Federal court. So—

Mr. CANNON. Would the gentleman yield for a further question?

Mr. WATT. Yes, I will yield to Mr. Cannon.

Mr. CANNON. We're about to—

Mr. WATT. I was saying that facetiously, of course, Mr. Chairman.

Mr. CANNON. We're about to mark up a class action lawsuit. Does the gentleman anticipate that this will have any effect on class actions?

Mr. WATT. No, sir. I don't think so. These are individual actions that we're dealing with.

Chairman SENSENBRENNER. If the gentleman will yield further, it might have an effect on class actions if there are a whole lot of athletes that are—

Mr. WATT. Right, that could possibly be. But we're still—hope springs eternal that the next bill will be defeated.

Chairman SENSENBRENNER. The gentleman's time has expired. The question—

Mr. CANNON. Mr. Chairman, I'm willing to accept the gentleman's amendment and would like to go on record saying that.

Chairman SENSENBRENNER. The question is on adoption of the amendment offered by the gentleman from North Carolina, Mr. Watt. Those in favor will say aye. Opposed, no.

The ayes appear to have it. The ayes have it, and the amendment is agreed to.

Are there further amendments? If there are no further amendments, the Chair notes the presence of a reporting quorum. Those in favor of reporting the bill favorably will say aye. Opposed, no.

The ayes appear to have it. The ayes have it, and the motion to report favorably is agreed to.

Without objection, the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute as amended, incorporating the amendments offered here today. Without objection—adopted here today, excuse me. Without objection, the Chairman is authorized to move to go to conference pursuant to House rules. Without objection, the staff is directed to make any technical and conforming changes, and all Members will be given 2 days as provided by House rules in which to submit additional, dissenting, supplemental, or minority views.



DOCUMENT NO. 4

SPORTS AGENT RESPONSIBILITY AND TRUST ACT

HEARING
BEFORE THE
SUBCOMMITTEE ON
COMMERCIAL AND ADMINISTRATIVE LAW
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

ON

H.R. 361

MAY 15, 2003

Serial No. 17

Printed for the use of the Committee on the Judiciary



Available via the World Wide Web: <http://www.house.gov/judiciary>

U.S. GOVERNMENT PRINTING OFFICE

87-094 PDF

WASHINGTON : 2003

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2250 Mail: Stop SSOP, Washington, DC 20402-0001

COMMITTEE ON THE JUDICIARY

F. JAMES SENSENBRENNER, JR., Wisconsin, *Chairman*

HENRY J. HYDE, Illinois	JOHN CONYERS, JR., Michigan
HOWARD COBLE, North Carolina	HOWARD L. BERMAN, California
LAMAR SMITH, Texas	RICK BOUCHER, Virginia
ELTON GALLEGLY, California	JERROLD NADLER, New York
BOB GOODLATTE, Virginia	ROBERT C. SCOTT, Virginia
STEVE CHABOT, Ohio	MELVIN L. WATT, North Carolina
WILLIAM L. JENKINS, Tennessee	ZOE LOFGREN, California
CHRIS CANNON, Utah	SHEILA JACKSON LEE, Texas
SPENCER BACHUS, Alabama	MAXINE WATERS, California
JOHN N. HOSTETTLER, Indiana	MARTIN T. MEEHAN, Massachusetts
MARK GREEN, Wisconsin	WILLIAM D. DELAHUNT, Massachusetts
RIC KELLER, Florida	ROBERT WEXLER, Florida
MELISSA A. HART, Pennsylvania	TAMMY BALDWIN, Wisconsin
JEFF FLAKE, Arizona	ANTHONY D. WEINER, New York
MIKE PENCE, Indiana	ADAM B. SCHIFF, California
J. RANDY FORBES, Virginia	LINDA T. SANCHEZ, California
STEVE KING, Iowa	
JOHN R. CARTER, Texas	
TOM FEENEY, Florida	
MARSHA BLACKBURN, Tennessee	

PHILIP G. KIKO, *Chief of Staff-General Counsel*

PERRY H. APELBAUM, *Minority Chief Counsel*

SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

CHRIS CANNON, Utah *Chairman*

HOWARD COBLE, North Carolina	MELVIN L. WATT, North Carolina
JEFF FLAKE, Arizona	JERROLD NADLER, New York
JOHN R. CARTER, Texas	TAMMY BALDWIN, Wisconsin
MARSHA BLACKBURN, Tennessee	WILLIAM D. DELAHUNT, Massachusetts
STEVE CHABOT, Ohio	ANTHONY D. WEINER, New York
TOM FEENEY, Florida	

RAYMOND V. SMETANKA, *Chief Counsel*

SUSAN A. JENSEN, *Counsel*

DIANE K. TAYLOR, *Counsel*

JAMES DALEY, *Full Committee Counsel*

STEPHANIE MOORE, *Minority Counsel*

CONTENTS

MAY 15, 2003

OPENING STATEMENT

	Page
The Honorable Chris Cannon, a Representative in Congress From the State of Utah, and Chairman, Subcommittee on Commercial and Administrative Law	1

WITNESSES

Honorable Tom Osborne, a Representative in Congress From the State of Nebraska	
Oral Testimony	3
Prepared Statement	6
Honorable Bart Gordon, a Representative in Congress From the State of Tennessee	
Oral Testimony	7
Prepared Statement	9
Mr. Scott Boras, Owner/President of the Scott Boras Corporation	
Oral Testimony	10
Prepared Statement	12

LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING

Prepared Statement of William Saum, Director of Agent, Gambling, and Amateur Activities, National Collegiate Athletic Association	13
---	----

SPORTS AGENT RESPONSIBILITY AND TRUST ACT

THURSDAY, MAY 15, 2003

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCIAL
AND ADMINISTRATIVE LAW,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to call, at 1:05 p.m., in Room 2141, Rayburn House Office Building, Hon. Chris Cannon (Chairman of the Subcommittee) presiding.

Mr. CANNON. The Committee will come to order. We are gathered here today for a hearing on H.R. 361, the "Sports Agent Responsibility and Trust Act." I would find it hard to believe that anyone in this room today has not been moved in some way by athletics in their lives, whether it is eagerly awaiting the tip-off of game seven of the NBA finals, gathering together with friends and family in anticipation of the kickoff of the Super Bowl, or cheering the likes of Mark McGwire and Barry Bonds in their quest to set home run history. I suspect everybody in this room has done all those things and more.

Sports touches all of us. It is a unique form of entertainment, athletic appreciation, and geographic pride. We sit in front of our televisions, we make trips to the stadiums, we even approach those we may not know very well with the comfortable oft-used phrase: "Did you catch the game last night?" But there is a business and personal side that can often be not quite as entertaining, usually with very real and sometimes sad results.

The multi-million dollar value of professional athletes' salaries, signing bonuses, and endorsement contracts has resulted in a proliferation of questionable ethical practices by some sports agents more concerned with lining their pockets than the welfare of those they are supposed to represent. These people are willing to break the rules in order to sign promising student athletes to representational contracts. They are willing to do this because the fees that accompany the representation of a professional athlete are considerable, and the agent will risk little consequence in comparison to the athlete or the school.

Motivated largely by financial gain, agents have gone to extreme measures to represent promising student athletes with even a remote chance of becoming a professional athlete. The reality that a college athlete will succeed professionally is highly speculative. It has been estimated that an NCAA athlete has no more than a 1 percent chance of making a professional team even in a backup

role. These agents or their cohorts, often known as runners, will use tactics, including secret payments to the athlete, undisclosed payments to the family or friends of the athlete who may be in a position to influence him or her, unrealistic promises, and even pressuring the athlete through intimidation and threats. In some cases, these agents have made secret payments to student athletes or their families, and then blackmailed them into signing a contract with the threat that they would disclose the violation of collegiate rules, thus jeopardizing the student's competitive eligibility. These acts go unpunished due to disparate, ineffective or, in some cases, a complete absence of State laws.

A student athlete entering into an oral or written agency contract generally forfeits collegiate eligibility. The college or university may be subject to various sanctions for violation of competition rules if contests were played with ineligible athletes. If this occurs, the economic impact on the school and the athlete can be substantial. Not only can a student athlete lose a scholarship, the university can be sanctioned with monetary penalties, loss of scholarships, forfeiture of contests, and loss of television revenues.

Currently, there is no Federal law that directly addresses the actions of these agents, although a majority of the States do regulate in varying degrees athlete, agents, and/or their conduct. Most recently, the National Conference of Commissioners on Uniform State Laws passed the Uniform Athlete's Agent Act addressing the conduct, practices, and registration of athlete agents. H.R. 361 will provide remedies for student athletes and the educational institutions, particularly in those States with no existing law addressing athlete-agent conduct.

I appreciate the fact that we have our Ranking Member Mr. Watt here with us today, and I am assured that many of our colleagues on this Subcommittee will be here before we finish this hearing.

It is my pleasure to welcome those who are with us today to testify regarding the subject matter of today's hearing. Each brings a unique perspective and a wealth of knowledge to this body.

As Dean of the Tennessee delegation, Congressman Bart Gordon is currently serving his tenth term in Congress. Congressman Gordon serves on the House Energy and Commerce Committee and on the Science Committee, where he is the second Ranking Democrat, is the Ranking on the Subcommittee on Space and Aeronautics. He also serves on two Subcommittees in Energy and Commerce, Health and Telecommunications and the Internet.

Educated in Rutherford County Public Schools, Congressman Gordon graduated with honors from Middle Tennessee State University in 1971. He served in the Army Reserves from 1971 to 1972 and received an honorable discharge in 1972. Gordon went on to receive his law degree from the University of Tennessee School of Law in Knoxville. The Murfreesboro lawmaker is married to Leslie Peyton Gordon, and the two have a daughter, Peyton Margaret Gordon.

As author of H.R. 361, we appreciate his presence and the testimony to be offered today.

Mr. Osborne became a Member of the United States House of Representatives on January 3, 2001. Congressman Tom Osborne

sits on the Committees on Agriculture, Education and the Workforce, and Resources. From 1972 until 1997, Representative Osborne served as the head football coach of the University of Nebraska Cornhuskers. Representative Osborne retired as the most winning active football coach in the NCAA Division 1-A. Prior to retiring, Congressman Osborne led the Huskers to three national championships in 1994, 1995, and 1997, thereby becoming a household name. Congressman Osborne and Mrs. Osborne have three children, Mike Osborne, Ann Wilke, and Susie Dobbs, as well as four grandchildren.

The author of several books, including *More than Winning and Faith in the Game*, Congressman Osborne graduated with a B.A. in history from Hastings College in 1959. Following graduation, he played three seasons in the National Football League. He earned an M.A. in educational psychology from the University of Nebraska, Lincoln, in 1963, and a doctorate in educational psychology from the University of Nebraska-Lincoln in 1975.

Congressman Osborne has a concurrent markup going on with this hearing, and so we are going to ask him to testify first and then move to Congressman Gordon. And then we will hear from Scott Boras, who is the owner and president of Scott Boras Corporation. Among his clients are such superstars and potential Hall of Famers as Greg Maddox, Kevin Brown, Barry Bonds, Alex Rodriguez, and Kevin Millwood, who just last week pitched a successful no-hitter for the first time in his career.

Mr. Boras has become a leader in his field, negotiating the first 50 million, 100 million, and \$200 million contracts in major league baseball history. Would you like to come into politics, sir? Just kidding. As well as negotiating the largest athlete contract in the history of professional sports. In 2002, the *Sporting News* recognized Mr. Boras as one of the 100 most powerful people in sports and was the most highly ranked athlete representative in all sports.

Mr. Boras played with the St. Louis Cardinals and Chicago Cubs organizations in the mid-1970's, after which he returned to law school at the University of the Pacific McGeorge School of Law. The Scott Boras firm provides legal counseling to amateur athletes. In addition, the agency also provides legal athlete representation and contract negotiations services for numerous professional baseball players. Mr. Boras is also the owner of Impact Sports Marketing and Agency, which secures and negotiates contracts for endorsements, personal appearances, equipment, and baseball cards.

In addition, William Saum, Director of Agent, Gambling, and Amateur Activities for the National Collegiate Athletic Association will be appearing through written testimony only.

Again, thank you for coming to today's hearing, and Mr. Osborne, you are recognized for 5 minutes.

STATEMENT OF THE HONORABLE TOM OSBORNE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Mr. OSBORNE. Thank you, Mr. Chairman, Ranking Member Watt, Members of the Committee, and also Congressman Gordon and Scott Boras. I am really pleased to have a chance to be able to speak to you about H.R. 361 today.

I would like to recognize the fact that Congressman Gordon has worked on this for a long time, and so I have joined him recently in the last couple of years and appreciate his leadership on this issue. My comments are going to be directed primarily to the world of football, because that is what I understood best. There is certainly a lot of agents in other sports.

I would say the reasons that we need this legislation are several, and the first that I would mention is that the financial incentives for agents and for athletes have become huge. If you are a first-round draft pick in the National Football League, the average amount of money, bonus and salary, that you could expect to receive in the first year would be \$8 to \$9 million. So the going rate for many agents is about 3 percent, so that is \$250,000 if you represent a high draft pick, and the amount of time required is not huge. You could represent theoretically eight or nine or 10 first-round picks, which would add up to some fairly large money. So we think that the money is big.

Secondly, it is important to realize that the National Football League certifies each year about 1,200 agents. These agents are required to be certified in order to represent a player who has already made the National Football League. So these would be players going in their second, third, fourth, fifth year. If you are coming out of college, you don't need to be certified by anyone. All you have to do is say you are an agent, and if you say you are one, you are one. You have no qualifications at all.

So we have 1,200 agents certified by the NFL, probably another 3 or 400 that aren't certified. And the difficulty is that there are only about 400 of those agents who represent anybody. So roughly three-fourths of the agents out there don't represent anybody in the National Football League. So there is tremendous competition to have access to an athlete.

So if you are not very competent and if you have no background or any expertise, what you often do is go after an undergraduate player, because the reputable agents normally will not do that.

So they will go to great lengths. And so if you check with your players, you will find out most of them have unlisted numbers because the agents start badgering them. They will go see them in the dorm even as early as their freshmen and sophomore years. So this makes it very difficult as far as education is concerned.

Of course, there are a great many illegal inducements that are offered. Sometimes it is money, sometimes it is a car, sometimes it is clothes, sometimes it is trips, and occasionally it even gets into drugs and women and the whole nine yards. So it is a fairly seamy business. It is not very attractive.

Oftimes what these people will do, with an undergraduate particularly, is to offer an agency contract which obligates the player, and many times they will couch it in terms as though we will post date the contract, it really doesn't mean anything, it is not going to affect your eligibility. But when you sign that contract, even when it is post dated, your eligibility is gone. If anybody finds out about it, if the NCAA finds out about it, it is gone. So that is one thing that they often do.

Probably the most common issue that I have run into that is really misleading is that they will promise a player that he will be

a higher draft pick. So you called in the National Football League, and they have a Committee that will tell you how high a player is going to be drafted. And they say, well, so and so is going to be in the third round. And the agent will invariably say, well, that is a lot of hogwash, they are just trying to keep you in school. I will make you a first-round pick if you will come with me, and I am going to get you a personal trainer, I am going to get you a nutritionist. We are going to take you to California and we are going to have you prepared, and you are going to go up in that draft because you are going to go and test so well at the combine that you are going to be a first-round pick.

Well, actually, nobody can make a player better in the draft. You know, that is a false promise. But it is what a lot of players want to hear, so obviously they buy into it. And a lot of them will invariably leave school. They may have 3 hours left to graduate. They will bail out, and they will go follow some agent somewhere. And of course that is a problem.

Also, we find that many of these agents will promise to handle the contract, they will handle taxes, they will handle endorsements, and also they will ask for power of attorney. And so we have some cases of people who are 35 years old all of a sudden find that their career is over and they have no money. One-half of the players leaving the National Football League have no money. Sometimes it is their own fault, sometimes it is the problem with the individual agents.

I am probably going to have to hustle here. Let me just give you three examples of some cases that impacted us very greatly. I went out to—we are getting ready to go to the Orange Bowl one night, and I can't find my starting quarterback. I find him sitting between two agents who have got him over in the corner of a hotel lobby, and we are 2 hours from kickoff. And these guys are hammering him. And of course none of these guys have any credentials at all.

Another guy we had signed in the 1980's, and buried in his contract was 13 percent. Normally it would be 2 or 3 percent. So he had to pay 13 percent in his contract. Fortunately, that particular agent was from California that did have some laws governing agents, and as a result we were able to prosecute and get \$300,000 back for that individual.

The last thing I will mention very quickly. We had a player who took a trip to California and we began to hear about it. It didn't sound good. He was talking about meeting Patty LaBelle and somebody else who was a TV star. And so I—there was a guy named **Lloyd Bloom**, who his name came up. And I called **Lloyd**, and I said, "Look, is this guy involved with you?" And **Lloyd** said, "Oh, no. No. We would never do anything to jeopardize his eligibility." Well, it turned out that we were sure that he had taken a trip, it was unauthorized, and so we declared him ineligible. He had one more year, and he probably would have been a first-round draft pick. So this guy lost his eligibility, and eventually **Lloyd Bloom** and **Norby Walters** went to prison, as did Tank Black and some others.

But, anyway, those are some of the examples of things that happen.

So, anyway, I know Congressman Gordon can fill you in on the details. But we think this is absolutely necessary that we have this type of legislation, and we appreciate your consideration of the legislation.

[The prepared statement of Mr. Osborne follows:]

PREPARED STATEMENT OF THE HONORABLE TOM OSBORNE, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF NEBRASKA

Thank you Chairman Cannon, Ranking Member Watt, and Members of the Committee. I appreciate the opportunity to come and speak with you today about legislation that Representative Bart Gordon and I have introduced. As you may know, I feel strongly about H.R. 361, the Sports Agent Responsibility and Trust Act, or SPARTA, and am thankful for the committee's consideration of this important legislation.

While the notorious cases of **Norby Walters**, **Lloyd Bloom** and Tank Black have shed some light on deceptive sports agents, we still allow unethical sports agents to prey upon hundreds of college athletes on campuses across this country each year. During my 36 years as a football coach, I was deeply concerned by overly aggressive, unethical sports agents who knowingly compromised a student-athlete's eligibility or took financial advantage of student-athletes and their families. With the lure of big money involved in professional sports, I experienced first-hand the difficulty in trying to keep agents and their runners from attempting to illegally recruit my players with cash and gifts. In pursuit of the hefty fees that are associated with representing professional athletes, sports agents often engage in unethical behavior that undermines the integrity of college sports.

When sports agents engage in this type of impermissible behavior, their actions undermine the integrity of college sports and threaten the athlete's college experience. By accepting anything of value from an agent, a student-athlete loses his eligibility and scholarship, the school faces sanctions, the reputation of the institution is tarnished, and the sports agent walks away with absolutely no consequences for his actions.

If a sports agent provides inducements to a student-athlete and therefore breaks NCAA rules, the student-athlete loses his eligibility to compete in collegiate competitions, and often times loses his scholarship. For many of these collegiate athletes enticed into forfeiting eligibility, the loss of eligibility means the loss of a college education if they cannot afford to pay their own way. In addition to facing sanctions they may not expect, these athletes often times damage promising professional careers. When a sports agent promises student-athletes fame and fortune—or a first-round draft selection—a focus on superstardom and wealth may prevent them from considering the consequences of signing away their NCAA eligibility.

In the 1980s, one of my players was offered some illegal inducements, and in turn lost his eligibility, which for the most part ruined his career. This particular player was involved with agents who had already given illegal inducements to players across the country. Eventually, these agents were indicted on a number of felonies, leading them to go as far as threatening some of the players with bodily harm. At the time, however, we lacked the laws to pursue these agents in the State of Nebraska, and these loopholes still exist today.

Unscrupulous agents often take advantage of students who have little or no experience in contract negotiations, potentially causing financial harm for student-athletes, their teams, and their respective schools. On a personal note, I had a player back in the 1980s that thought he signed a contract giving 3 percent of his earnings to the agent, but somewhere buried in the contract was a much larger figure of 13 percent of his earnings, causing him to lose thousands of dollars. Fortunately, this player was able to recover more than \$300,000 under California state law where this agent originated. In my home state of Nebraska, however, we did not have the laws to go after this agent.

Schools also stand to lose financially from the deceptive actions of sports agents. If a student-athlete loses his eligibility because he accepted inducements from an agent, and his ineligibility is not disclosed to the school and the ineligible student is allowed to compete in violation of the rules, that school may face a number of sanctions, including suspensions, fines, the potential loss of post-season play and revenue that this might represent.

When student-athletes lose their eligibility by entering into an agency contract with unethical agents, intercollegiate athletics suffers because of the negative perception that is often associated with this type of activity. In recent years, the number of incidents where student-athletes were persuaded by unscrupulous agents to

accept payment or other consideration in exchange for exclusive representation has created a negative perception that threatens the integrity of college athletics and the educational institution involved. While colleges and universities rarely do anything wrong in these situations, the mere fact that their student-athlete entered into such an agent contract reflects negatively on the school.

Why is this legislation necessary? As of April 2002, the National Football League Players Association reported that there were 1,196 certified football agents, almost double the number from 10 years ago. But, more than 800 of these agents have no clients. Hundreds of these so-called "agents" lack both certification and qualification. Unethical sports agents, often motivated purely by greed, will use any means necessary to represent a student-athlete who has even a remote chance of playing professional sports.

As of April 25, 2003, seventeen states in our country, including my home state of Nebraska, had no regulations governing the conduct of sports agents, while many other states have a patchwork of vague and differing agent regulations. Until all 50 states adopt the same standards for regulating sports agents, there will be no uniformity in the laws governing sports agents. SPARTA would provide a minimum federal backstop for regulating sports agent conduct, while at the same time respecting tough state laws.

SPARTA would make it unlawful for an agent to give false or misleading information or make false promises or representations in order to entice a student-athlete into signing an agency contract. This legislation would also make it unlawful for an agent to fail to disclose to the student in writing before signing a contract that the student may lose his eligibility to compete in collegiate athletics. SPARTA requires sports agents and student-athletes to notify the school's athletic director within 72 hours—or before the student-athlete's next sporting event—of signing an agency contract. This legislation is needed in order to protect our student-athletes from unscrupulous sports agents.

The bottom line is most student-athletes do not make it in professional sports. But, they may have been enticed to leave school early only later to realize that their agents acted solely for their own financial benefit, with no concern for the athletes' future. Over 36 years of coaching, I saw too many student-athletes taken advantage of by sports agents looking out for their own bottom lines. I firmly believe we need to treat sports agents who lie, cheat and deceive, as we would treat any other businessperson who promises the world but delivers only heartache.

Thank you again for the opportunity to be here today to offer my thoughts about this important legislation.

Mr. CANNON. Thank you, Mr. Osborne. I think that we don't have the pressure of a vote; we have about 13 minutes left. I am inclined, Mr. Gordon, if you would like to go ahead and testify, then we expect, Mr. Osborne, that you will rejoin us. You are certainly welcome, Bart, to come back if you would like. And Mr. Boras, if you wouldn't mind, I think this is going to be a quick vote, and we can come back. So why don't you go ahead with your 5 minutes, Mr. Gordon?

STATEMENT OF THE HONORABLE BART GORDON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mr. GORDON. Thank you, Chairman Cannon, Ranking Member Watt, and Members of the Committee. And also many thanks to my friend Tom Osborne for bringing his expertise and help into this bill.

Chairman Cannon, you basically gave my opening statement in your opening statement, so I will just ask that my statement be made a part of the record, and I will try to be mercifully brief since I think that we have something of a consensus here.

I first became interested in this issue really in 1996, when a friend of mine at home who was a former NFL as well as college coach started telling me about the real problems that they are having, and with the escalation in money since that time they have

only gotten worse and younger in that this is into the high schools, and even with some gymnasts even younger than that.

Mr. Osborne went through a lot of the horror stories, so I won't go into that much more other than to say that the real problem now is not as much the agents as their runners. I mean, they go so far as to have walk-ons go on the football teams to get to know some of the star players so they then can get to know them better and entice them in some way later on. And what we are trying to do here is stop really a win situation and a lose for everybody else but the agents. Right now, if some kid takes a gold chain, a suit of clothes, a trip or something by an agent or by one of their runners, then that athlete loses his scholarship, loses his eligibility. The school is penalized even though they have done everything they can to try to stop it. And the kid, since he loses his scholarship, he is out. The agent is the winner. Nothing happens to him. But now the kid can't play ball anymore, and so he winds up going ahead and signing. He or she.

And what we are trying to do is make those agents obviously more accountable. And we want to try to do this by not setting up a Federal, you know, police force for athletics, but rather we are going to be deputizing the State Attorney Generals, allowing them to use current unfair and deceptive practices through the FTC, and this way we can really allow the States to move forward.

Now, some States already have legislation, but it is not uniform. You have a situation where North Carolina doesn't have anything, so you can have a kid that could be playing at the University of Tennessee where we do have a State law but they are from North Carolina, so when you go down in North Carolina they get you, or if they go up and play Boston College, there is not a law in Massachusetts, they can get you there.

So what we do is make it an unfair and deceptive practice by a sports agent or a runner giving false or misleading information or promises to an athlete, providing anything of value to a student or anyone associated with those students, fail to disclose in writing to students that they can lose their eligibility to play college sports if they sign with an agent. Also, to pre-date or post-date a contract. Additionally, they are required to notify the school if a kid signs, so that the school then won't mistakenly play him in a game somewhere and wind up being penalized.

As I say, this is about as consensus as you can get. This bill has been endorsed by the NCAA, the National Association of Collegiate Directors of Athletics, the Black Coaches Association, the National Association of Basketball Coaches, the American Football Coaches Association, the National Junior College Athletic Association, the Knight Foundation Commissioner on Intercollegiate Activities, and a growing list of coaches, Tubby Smith to Joe Paterno. So this really has been vetted and I think presents a good approach.

It also does not hinder any State that wants to take their legislation further. These are not criminal penalties; these are civil penalties. If the State wants to do more, they can.

Also, I want to thank my staff, Dana Lichtenberg, for all the time she has put in on this by building these coalitions. You have done a good job, Dana. Thank you for your help.

And I will yield back my time.

[The prepared statement of Mr. Gordon follows:]

PREPARED STATEMENT OF THE HONORABLE BART GORDON, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF TENNESSEE

Thank you Chairman Cannon, Ranking Member Watt and Members of the Committee. I appreciate the opportunity to come and speak with you today about H.R. 361, the Sports Agent Responsibility and Trust Act.

I have been working on the problem of predatory sports agents since 1996 when a friend and constituent of mine, Coach Ken Shipp, came to see me about the need for a uniform federal law to protect kids from unscrupulous sports agents.

The agent problem has only grown since 1996. Agents hoping to cash in on the next NFL or NBA star will stop at nothing to convince a student-athlete with even a remote chance of playing professional sports to drop out of school and go pro early. Agents offer athletes cash, cars and clothing. They pay runners to curry favor with star athletes. They secretly pay off their friends and offer jobs to their family members who are in a position to influence the athlete. Sometimes physical threats are involved.

Agents know it's against NCAA rules for kids to sign with an agent and still compete in college sports. It's also against NCAA rules and many state laws for them to bribe a student-athlete. Yet agents, would-be agents and their runners continue to aggressively pursue student-athletes with little regard for their future or the school's athletic program.

That's because unscrupulous agents know they face little or no consequences under most state laws for enticing student-athletes with lies and gifts, even though these actions may cost student-athletes their scholarships, and may result in significant fines and penalties for the schools. If these practices are illegal in the student's home state, it is easy enough to contact student-athletes when they are in a state with no sports agent law.

Efforts are underway on the state level to create a comprehensive uniform licensing process for sports agents. However, the Uniform Athlete Agent Act (UAAA) has been passed in only 21 states.

Rep. Osborne and I introduced H.R. 361 to address this interstate problem head on. It is intended to work hand in hand with state law by creating a basic uniform federal standard for sports agent conduct vis a vis student-athletes without preempting stronger state laws. This will stop sports agents from using the 29 states with weak or no sports agent laws as safe havens to prey on student-athletes.

SPARTA would make it an unfair and deceptive business practice for a sports agent to give false or misleading information or make false or misleading promises or representations; provide anything of value to students or anyone associated with these students; fail to disclose in writing to students that they may lose their eligibility to play college sports if they sign an agency contract; or predate or postdate contracts.

In addition, the bill requires sports agents to immediately notify a student-athlete's school in writing when an athlete agrees to an agency contract so the athlete is not unknowingly played in a game, and subjecting the school to sanctions and disqualifications.

The bill deputizes state attorneys general to prosecute violators in federal district court on behalf of the FTC. In addition, schools would be given the right to sue to recoup damages caused by the illegal recruiting activities of a sports agent.

The pressures on student-athletes in college are tremendous. I believe we have a responsibility to educate our student-athletes and protect them from unscrupulous sports agents whose bottom line is their own financial gain. This legislation will send a loud signal to "rotten apple" agents that they will be held accountable for unethical recruiting practices.

SPARTA is supported by the NCAA, National Association of Collegiate Directors of Athletics, Black Coaches Association, National Association of Basketball Coaches, American Football Coaches Association, National Junior College Athletic Association, the Knight Foundation Commission on Intercollegiate Athletics, and a growing list of coaches including Tubby Smith of the University of Kentucky, Joe Paterno of Penn State University and R.C. Slocum of Texas A&M.

Thank you again Chairman Cannon, Ranking Member Watt, and Members of the Committee for the opportunity to speak to you today about this very important issue.

Mr. CANNON. Thank you, Mr. Gordon. The Chair would now like to recognize that Mr. Delahunt has joined us from Massachusetts, Mr. Coble from North Carolina, who has another hearing or a

markup at the same time, Mr. Flake from Arizona, Mr. Carter from Texas, Mr. Chabot from Ohio.

And Mr. Boras, if you wouldn't mind, you are sort of an attractive witness, and I think if we leave you until after the vote, we will get everybody back so we get this marked up and move on. And with that, the Chair will recess for a 15-minute period to handle this vote.

Let me remind all Members of the Committee we need you back here for the markup. This markup should not take long, so please.

[Recess.]

Mr. CANNON. We are going to call this hearing back to order. Thank you. We do expect several Members of the Committee to join us. But in the meantime, Mr. Boras, if you would like to give us your testimony, we are anxious to hear it.

STATEMENT OF SCOTT BORAS, OWNER/PRESIDENT OF THE SCOTT BORAS CORPORATION

Mr. BORAS. Thank you, Chairman Cannon and Ranking Member Watt and Members of the Committee. This is something that is very close to heart for me because of my personal experiences being a professional athlete and being recruited to a college and being really a student athlete that has gone through the system and watching how the system has changed from when I processed through it as an athlete to the current system that we see in the 1990's and 2000.

The field of sports agency I think is one that has resulted in a different field, depending on the sports. In football and basketball you have identifiable named players that are coming out of primarily college that are going to be of immediate benefit to professional franchises. As a result of that, you have an immediate benefit that then would result to the sports agents. A sports agency by its nature is that the fee is only gained when the student athlete becomes a professional. Sports teams are only improved if they gain under contract the athlete's skills.

So when we have the relationship of university, sports agent, and professional team, the interplay of the three is something that creates the dynamic of concern. Pro sport teams I noticed have been undressed in the process of what we have begun to undertake, which I think primarily is the concern for the student athlete; is that we really want to make sure that the student athlete makes an informed decision, that the student athlete has the appropriate information to enter professional sports if he so chooses knowing the risk. Professional sports teams—and I know of none in any sport—ever publish or provide to universities or to student athletes the risk of professional sport. How many players in any sport spend 6 years or 3 years? What is the average earned income? And none of those teams provide that information to anyone. It is an undisclosed fact, it is a hidden risk. And it is something that, if that information was provided and if there was cooperation from the professional sports teams, I think that the university officials, I think the sports agents and their contacts to suggest that the overpromotion of the athlete, to suggest that will be a great major league player or professional football player or basketball player, once those numbers are revealed by the league and the universities

have them, then we can begin the information and education process.

The student athlete needs information. The NCAA rules state that an athlete cannot have a sports agent but he is allowed to have legal counsel. One of my concerns—and I support this bill greatly—the sports agency industry has absolutely no methods—we have heard from the panel and Congressman Osborne and Congressman Gordon that there is no criteria, there is no qualifications. So where do we go to make sure the student athlete is aware of the needed qualifications and what type of system do we mandate?

In a bill, I think that when universities are given the access to sanction and damages, certainly there should be requirements that—the universities also benefit from student athletes, and there should be requirements by the universities to provide information to these student athletes. Panels. For example, when I went to Georgia Tech to see Kevin Brown, Georgia Tech University had an agent review committee, and they may have interviewed, I don't know, 70, 80 agents and examined their qualifications, their experience. And so Kevin Brown got an opportunity to—he was not interfaced with agents directly. The university had a system by which there was a review panel and they were able to really provide a scrutiny so that the athlete was protected, and, through that process, learned of the qualifications needed to be properly advised in a professional career.

Many universities have—while they certainly, I think, want to have great athletic programs, and go to great lengths to recruit athletes—and I think we have heard a lot about how sports agents recruit athletes. Let us not forget how universities recruit athletes. And part and parcel of that process, and if we want to really devise a bill that considers what the needs of the student athlete are, certainly the university is an educational institution and it can do a great job of having classes, panels, methods of getting information to the athletes of the knowledge of this bill itself and of the knowledge of who out there in the world is qualified to provide information to the student athlete.

Pro sport teams, colleges, high schools open their arms to them. They have access to the campuses, they have the ability to talk to the student athletes, they have the ability to reach out to them. This is a level of recruitment. When we hear about what agents do, I want to point out that if you become a professional athlete, you understand that everyone wants your services and your skills. And pro sport teams are trying to acquire you at the lowest cost. Consequently, pro sport teams do not want athletes to attend college. It provides a leverage point for them. It provides something where that athlete is not under control by that team. It also provides the fact that the athlete may improve in college, and therefore increase the acquisition cost by the professional team.

The bill should also include some mechanism by the universities where pro sport teams are required to report contact to the student athlete. Because remember, the student athlete's belief about their success in professional sports doesn't alone come from sport agents; it comes from the scouts and people in professional sports who are trying to lure that athlete away from college sometimes earlier

than graduation to pursue a professional sports career, because what you pay a rookie is a lot less than what you pay a seasoned veteran. And, consequently, if you can get a great athlete as a rookie, it lowers the cost of operation to the professional sports team.

So in looking at a bill—and while this is a tremendous first step, I think that we have to really consider the dynamic and prioritize that the student athlete needs to be protected. We are talking about 18, 19, 20-year-old young men who are walking into a system. You are given a scholarship, you go to college, and all of a sudden the pro world is opened up to you, and now where do I go. If education is the measurement of the university, and we know that a career development is part of the university program, when you invite great athletes to your campus, you should also have as a part of the athletic department programs which certify, qualify representatives and give the athlete knowledge of his future career, which may be in pro sports.

Secondarily—

Mr. CANNON. Mr. Boras.

Mr. BORAS. Yes.

Mr. CANNON. Your time has expired. If you could wrap up fairly quickly, we will then go to questioning.

Mr. BORAS. I will. Thank you, Mr. Cannon. Nothing new about a sports agent talking too much.

Finally, I think the bill is a wonderful first step. We are finally putting some credence to the process. The bill creates a cause of action for the university. It allows the recovery of damages. I think it should be required that allocation of those damages to the university should at minimum provide scholarship to the student athlete from which the damages arose.

Secondarily, they should consider a private right of action for the student athlete in the bill itself in addition to the private right of action for the university.

Thirdly, I think that we should provide something in the bill that requires the universities who benefit from the sanctioning power and the damage action to also control the conduct of professional teams.

Thank you.

[The prepared statement of Mr. Boras follows:]

PREPARED STATEMENT OF SCOTT BORAS

To Mr. Chairman Cannon, Ranking Member Watt and members of the Committee:

I am a former college and professional baseball player. After finishing my pro career, I attended law school. During that time, my former professional teammates approached me to serve as their baseball attorney. My law practice grew and I began providing legal advice to high school and amateur baseball players.

In my 20 years as a baseball attorney, my company has strongly encouraged 99 percent of our athletes—including potential first-round draft picks—to attend college. Our research provided to colleges and universities shows that less than 1 percent of the student-athletes go on to have a 6-year pro career. Our college recommendation is unpopular with professional baseball franchises that want the student-athletes to turn pro.

The unfortunate part of sports agency is that because agents' fees are gained only when a student-athlete signs a professional contract, many agents encourage the athlete to skip college and pursue a pro career. Thus, because we promote college, we concur that the Sports Agent Responsibility and Trust Act is needed to regulate agents who are following their own interests as opposed to the student-athletes.

Although H.R. 361 creates a cause of action and remedy for the university, Federal Trade Commission remedy and state attorney general remedy, paramount attention should be directed to providing relief for the student-athlete. The bill should be amended to create a cause of action and remedy for student-athletes if agents damage them.

Student-athletes and their families rarely understand the complexity of the NCAA and professional sports rules. In most instances, athletes are only left with the information that is given to them by a university or outside counsel. The decision whether to forgo a college scholarship and pursue a professional career requires sophisticated analysis and legal counsel. Any bill drafted to insure attendance and completion of a college education should promote the use of legal counsel to assist the student-athlete in making a fully informed decision. In its present state, the bill does not distinguish between a sports agent whose relationship has one intended direction for the student-athlete and that of an attorney, who is mandated to serve the best interest of the student-athlete.

While H.R. 361 is the first step to protect student-athletes from inappropriate conduct by sports agents, the conduct of professional sports teams also needs to be monitored. Team representatives are invited to visit high school and college campuses. They draft and sign the players. And yet, the teams are not accountable.

This bill should include a provision requiring pro sports franchises to report to the NCAA their meetings and discussions with student-athletes, and which agents they've had contact with. The conduct of a pro sports franchise should be subject to the same scrutiny as that of a sports agent.

The bill should include a meaningful remedy for a student-athlete who is damaged by inappropriate agent conduct. The bill should require agents to hold up to a million dollar bond or proof of net worth in that amount. If the agent relies on net worth, then any damage award against the agent should be a non-dischargeable debt.

Additionally, the bill should authorize the athlete to recover up to one million dollars in damages from an agent whose conduct results in termination of the athlete's collegiate eligibility or loss of scholarship.

If the athlete has a significant remedy, the agent would be unable to count on the athlete's secrecy in the agent's wrongdoing. This remedy would be an effective deterrent to unauthorized oral and written agreements between the student-athlete and agent.

To conclude, student-athletes who have the ability to perform at the college or professional level have decisions and opportunities that most students do not face upon entering college. This bill represents a major step in regulating how academic institutions, sports franchises, and sports agents interact with the student-athlete. Currently, the student-athlete suffers due to the absence of a uniform state or federal regulation that oversees the interaction of these three entities. This bill will help in the resolution and creation of a responsible approach to the advancement of our coveted student-athletes through the academic and professional system.

[The prepared statement of Mr. Saum follows:]

PREPARED STATEMENT OF WILLIAM S. SAUM

I appreciate the opportunity to provide written comments on behalf of the National Collegiate Athletic Association (NCAA) and to express our support for H.R. 361, the Sports Agent Responsibility and Trust Act (SPARTA). The NCAA is a tax-exempt, unincorporated association of approximately 1,260 colleges, universities, athletics conferences and related organizations devoted to the regulation and promotion of intercollegiate athletics for male and female student-athletes.

As director of agent, gambling and amateurism activities, and a former campus administrator and coach, I am acutely aware of the impact that unscrupulous athlete agents can have on the lives of college student-athletes. In today's society, professional athletes are highly compensated and most have agents that perform valuable services. Unfortunately, the illicit practices of some of these agents, would-be agents and their runners have caused serious problems for student-athletes and educational institutions as these agents aggressively pursue the substantial fees that accompany the representation of professional athletes. These agents, motivated largely by financial considerations, are willing to use any means necessary to represent a student-athlete who has even a remote chance of playing professional sports. They frequently employ tactics that involve secret payments or gifts (goods, autos, cash, clothing) to the athlete, undisclosed payments to friends and relatives who may be in a position to influence the athlete, unrealistic promises and considerable arm-twisting.

There can be significant damage that results from these impermissible and oftentimes illegal practices. Impermissible benefits provided by agents violate NCAA rules and may result in the following: student-athlete ineligibility for participation in NCAA competition, harsh penalties on the team and the university (including the imposition of NCAA sanctions that have resulted in the repayment of monies received from NCAA championship competition, forfeiture of contests and other penalties.)

The SPARTA would make it unlawful for an agent to give false or misleading information or make false or misleading promises or representations; provide anything of value to students or any individuals associated with these students; fail to disclose in writing to students that they may lose their eligibility to compete as student-athletes if they sign an agency contract; or to predate or postdate contracts. All of these activities are necessary to protect our student-athletes from unscrupulous agents.

In addition, the NCAA strongly supports Section 7 of SPARTA that recommends states pass the Uniform Athlete Agent Act. The adoption of the state model bill creates a comprehensive, uniform registration process that will provide important consumer information for student-athletes, parents and institutions, as they will have access to the detailed information contained in the agent application. Currently, the Uniform Athlete Agent Act (UAAA) has been passed in 21 jurisdictions, and 12 additional jurisdictions have introduced the Act into their state legislatures. We plan to work hard in the coming year to get it passed in many more states.

The NCAA has developed an arsenal of educational information on athlete agents, including videos that raise the awareness about agents and NCAA regulations, an NCAA information packet and a list of questions that student-athletes should ask agents. Also, an important brochure entitled "A Career in Professional Athletics" is available to member schools.

The NCAA's agent, gambling and amateurism activities staff works closely with high school athletes, member institutions and even agent groups, through the professional players associations. In short, we want to educate student-athletes, athletics administrators and agents, prevent violations of NCAA regulations, and enforce the current agent rules.

Our member institutions have developed a variety of programs to achieve these results. Several schools conduct agent days where a student-athlete can meet with an agent in an organized and monitored manner. Many of our schools also conduct educational seminars for their elite athletes, which include alumni who have participated at the professional level. These alumni provide first-hand experiences from which enrolled athletes can learn. Finally, our schools provide a panel of experts (Pro Sports Counseling Panel) for athletes to visit with regarding the search for an agent.

The SPARTA, in conjunction with the UAAA in all 50 states, will provide important and necessary steps to address the problem of unscrupulous athlete agents. The NCAA plans to continue its strong efforts and use its resources to pass the UAAA in the remaining states.

Mr. CANNON. Thank you, Mr. Boras.

Mr. Watt, do you have questions?

Mr. WATT. Thank you, Mr. Chairman. I think I will be brief. I hope I will.

I am a cosponsor of this legislation. But it is always easier to be a cosponsor of a piece of legislation that has kind of high-powered, high-minded sounding purposes than it is to take the consideration of that legislation seriously and do the job that we are here to do. And one of the concerns I had as a Member of the Judiciary Committee I think I have satisfied myself about, but I will give Representative Gordon a chance to talk about it just a little bit. And that is the concern that there is a Federal interest here that we are furthering. And the way you seem to have done that is you have defined some conduct that seems to be unfair, and you have made it in effect an unfair and deceptive trade practice under the Federal Trade Commission Act. That presumes that there is some overriding Federal purpose here that we are trying to achieve. And just talk to me about that aspect of it a little bit.

Mr. GORDON. Well, I think it is certainly again unfair and deceptive to approach these young athletes with bad information as it would be to try to sell an automobile or anything else. So I think you have the same type of Federal interest.

This was what you might call sort of the lowest impact type of approach. We wanted to try to do this in a way where we weren't setting up, again, a Federal sports police, trying to use existing vehicles to accomplish our goal, and this seemed to be the easiest way to do it.

Mr. WATT. Is there a notice that you have and a provision for an action by the Commission and an action by States and Attorney Generals and ultimately an action by educational institutions, which I want to ask you a question about also. But I presume under the unfair and deceptive trade practices statute of the Federal Trade Commission Act, there is also a private right of action. Is there not, or is there?

Mr. GORDON. I would not think so. No.

Mr. WATT. Why wouldn't that be the first recourse that we would be talking about providing?

Mr. GORDON. Well, again, you are talking about—

Mr. WATT. First and foremost, it is the athlete that gets injured. I understand the State's interest, I understand the Commission's interest. I think I understand the educational institution's interest, although I may have some reservations about giving them an independent right of action. But why wouldn't the student athlete and/or his guardian or family be the first in line to have a private right of action?

Mr. GORDON. Well, as a practical matter, you are still dealing with 18, 19, 20-year-olds, many of which are coming from an already fairly desperate economic situation, that probably also doesn't have either experience or a comfort maybe level in the court system, and that it would seem that it would be better to, again, through using your State Attorney Generals they would be more comfortable taking this action. And as a practical matter, what happens here—and I have to take some disagreement in terms of the universities' role. I think the universities have a very big role here, and all the coaches that I have talked to have made it very clear to me that they spend a lot of time trying to inform their athletes about these type of problems. And so you really have got a built-in situation where you have got the universities that are trying to look after the athletes, who then can go to the Attorney General that already has a vehicle to take quick action. And that was sort of the process that we set up, rather than leaving it just to an individual, who wouldn't be familiar and may be even uncomfortable with this type of action.

Mr. WATT. Okay. I guess I have some reservations about is there any cause of action that the individual independently has who gets really taken advantage of by an agent?

Mr. GORDON. You know, potentially through contract law in the individual States you might be able to. And, again, this is somewhat of an umbrella to give uniformity across the country. And individual States, some have criminal penalties and some, you know, go much further than this. So I think the States would be able to do it in that regard.

Mr. WATT. All right. I will yield back in the interest of time.

Mr. GORDON. You know, and I am not sure—you asked a good question and I am sorry I don't have a complete answer; I can get you more. But I am not even sure that we would have jurisdiction to give that personal—

Mr. WATT. Well, an individual, unfair and deceptive trade practice, I mean, the harm is actually to the individual in addition to the public harm that we assume goes with an unfair and deceptive trade practice. The most direct harm is to the individual. And if there is a Federal interest in doing it on the global level, I would think there would be a Federal interest in giving some cause of action to the individual student athlete who has the most direct injury, much more direct than either the Commission, the Attorney General, who is supposed to protect the public's interest through the State, or the university's interest, all of whom have an interest. But I guess I assume that the individual had a private cause of action under the Unfair and Deceptive Trade Practices Act, and apparently that is not the case.

So we will take a closer look at that. I am not saying that that is necessarily a good idea. I kind of started with the assumption that there was a private cause of action, and that was—I am glad we clarified it at least.

Mr. GORDON. That is why we have hearings, to bring in more thought and look at these issues a different way. That was something that really didn't occur earlier.

Mr. WATT. I yield back.

Mr. CANNON. Thank you, Mr. Watt. Inasmuch as we have a markup left, does anyone to my right have a burning desire to ask questions?

Mr. GORDON. I would point out, I see that my neighbor Mrs. Blackburn is here. I guess you were probably your first term in the Tennessee State Senate when the Tennessee equivalent of this bill came forward.

Mrs. BLACKBURN. I think that you are correct, and I think that that was handled by—

Mr. GORDON. Mr. Womack.

Mrs. BLACKBURN. Mr. Womack. Thank you. I was struggling for his name there. But yes, he always did a good job with the higher education and secondary education issues. And thank you for your good work on this.

Mr. CANNON. Mr. Feeney, would you like to—

Mr. FEENEY. Yes, Mr. Chairman, just briefly. A couple questions. And it occurs to me that Mr. Watt from North Carolina is maybe correct, that the student has an interest here. And perhaps, Mr. Watt, what we may want to do is take a look at putting a provision in the bill at some point perhaps allowing the athlete to void the contract within a period of time, say 2 or 3 years, and require the agent to disgorge him or herself of any profits that were gained from the illicit activity. At a minimum, that would allow the athlete to protect him or herself.

Mr. WATT. If the gentleman would yield. I am not sure that would go as far as I would want to go. If he still has lost his eligibility, he has lost—you know, he has been damaged far in excess

of just the ability to void a contract, I think. So, but we can talk about that further.

Mr. FEENEY. At a minimum, that might be something we could move toward.

But I guess I would ask Mr. Boras, because student athletes have other legal needs at times other than a formal agent to negotiate a percentage clause of a deal, and I guess I would ask, how do we delineate—you have used the term “agency contract.” but, for example, supposing a student athlete is anticipating some new-found wealth or may be already wealthy and is talking to attorneys about estate planning or insurance needs, supposing that I happen to be fortunate enough to be dating the best female collegiate golfer in school and she decides that she wants to, before we get married, enter into a prenuptial contract, how are we going to make sure that we are getting and precluding the activity that we want to preclude without making it difficult for attorneys to render competent advice and counsel to student athletes?

Mr. BORAS. I think one of the reasons that we are here today and discussing this bill is the very delineation between licensed, qualified and, maybe more importantly, bonded and held to fiduciary responsibilities by State and, you know, National Bar Association rules. The NCAA has drafted rules. If you look at them, the overriding view of college coaches and of the athletes themselves is that someone who is an expert in a sport field, who also is an attorney, however you want to label him, he is an agent. So don't—stay completely away.

I come in contact with the big issue of high school athletes who are drafted annually by major league baseball teams. The percentage of high school athletes that make it to the major leagues for 6 years is .0025 percent. The teams draft them because every now and then they get a superstar that becomes an Alex Rodriguez. But the reality of it is, is that this is bad medicine. Now, we have told teams this; we show them the data, we give the data to the families. The scouts of the teams go to the families and say, don't talk to them, they are agents, you are going to lose your eligibility. So, whenever these bills are drafted—and the first thing that I saw was, we need to clearly delineate and distinguish between use of an attorney. And I must tell you that an athlete—negotiating with a major, with a professional team is something that an athlete definitely needs economic and legal counsel on, without a doubt. And he needs legal counsel on a number of other areas. But the confusion that pro teams promote is—and sometimes colleges promote is that use of legal counsel is akin to an agent, it is illegal, it will get you in trouble. And I think responsible drafting and further education of coaches and universities, I think will help to allow the student athlete to know what directions he can go, with the fine line being an attorney who is an agent is acting as an attorney provided he doesn't do the one thing, and that is negotiate with a professional franchise.

Mr. FEENEY. Thank you.

I yield back, Mr. Chairman.

Mr. CANNON. Thank you, Mr. Feeney.

I want to thank the panel. We appreciate the testimony. It has been very clear, very concise, and we appreciate—and particularly,

Mr. Boras, your comments on what we might do in further legislation with colleges. We will view that as it comes up.

Again, thank you very much for being here now. You are free to depart if you wish. We are going to go forward and mark up this bill.

So thank you very much.

[Whereupon, at 2 p.m., the Subcommittee was adjourned.]



DOCUMENT NO. 5

Luther	Pickering	Stelton
Lynch	Platte	Slaughter
Maloney (CT)	Platte	Smith (NJ)
Maloney (NY)	Pombo	Smith (TX)
Mamulio	Pomroy	Smith (WA)
Masaul	Poranna	Snyder
McCarthy (MO)	Price (NC)	Solis
McCarthy (NY)	Price (OH)	Spratt
McColum	Putnam	Stack
McCrery	Quinn	Starnes
McGovern	Radanovich	Stump
McHugh	Rabali	Sullivan
McInnis	Rangel	Sununu
McKeon	Regula	Tanner
McKinney	Reyes	Tauscher
McNulty	Reynolds	Tauzin
Meenan	Rivers	Taylor (NC)
Meek (FL)	Rodriguez	Thomas
Meeks (NY)	Rosen	Thompson (MS)
Menzies	Rogers (KY)	Thornberry
Millender	Rogers (MI)	Thune
McDonald	Roe-Lehtinen	Thurman
Miller, Dan	Ross	Tiacht
Miller, Gary	Roisman	Tibert
Miller, Jeff	Rothman	Tierney
Min	Roukema	Toomey
Molohan	Rohrabacher	Turner
Moran (VA)	Royle	Turner
Morales	Rush	Udall (CO)
Myrick	Ryan (WI)	Upton
Nadler	Ryan (KS)	Valdesquez
Napolitano	Sanchez	Villier
Neal	Sanders	Walden
Nehmercutt	Scheidt	Walsh
Noy	Sawyer	Walsh
Northup	Saxton	Walkins (OK)
Nowrood	Schalkowsky	Walkins (OK)
Nussle	Schiff	Walton (CA)
Ohey	Schrock	Walton (NC)
Orcis	Scott	Waltz (OK)
Ortino	Sensenbrenner	Waxman
Oso	Serrano	Weiner
Otter	Sessions	Wilson (FL)
Owens	Shadegg	Wilson (PA)
Oxley	Shaw	Weldon (FL)
Pallone	Shays	Wexler
Pacorell	Sherman	Whitfield
Pastor	Sherrwood	Wilson (NM)
Paul	Shimkus	Wilson (SC)
Pelosi	Shoens	Wolf
Pease	Shuster	Woolsey
Peterson (PA)	Simpson	Wynn
Petri	Skeen	Young (AK)
Pheips		Young (FL)

NOES—40

Aderholt	Hefley	Barnstad
Baird	Hilliard	Sabo
Baldwin	Kucinich	Stenholm
Bovick	Larson (WA)	Strickland
Brown (OH)	LeBlond	Stupak
Capuano	Markey	Taylor (MS)
Condit	Matheson	Thompson (CA)
Coschillo	McDermott	Udall (NM)
Crane	Miller, George	Udall (NM)
DeFazio	Moore	Waller
English	Moran (KS)	Wicker
Fatah	Oberstar	Wu
Fliner	Oliver	
Gillmor	Peterson (MN)	

ANSWERED "PRESENT"—1

Tancredo

NOT VOTING—22

Algerman	Mascara	Smith (MI)
Blagojevich	McIntyre	Souder
Brady (PA)	Mica	Sweeney
Burton	Murtha	Terry
Cannon	Payas	Towns
Cunningham	Rehberg	Trafiacant
Dicks	Riley	
Lampson	Schaffer	

□ 1915

So the Journal was approved.
The result of the vote was announced as above recorded.

SPECIAL ORDERS

The SPEAKER pro tempore (Mr. STEARNS). Under the Speaker's announced policy of January 3, 2001, and under a previous order of the House,

the following Members will be recognized for 5 minutes each.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. LIPINSKI) is recognized for 5 minutes.
(Mr. LIPINSKI addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

SPORTS AGENT RESPONSIBILITY AND TRUST ACT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Nebraska (Mr. OSBORNE) is recognized for 5 minutes.

Mr. OSBORNE. Mr. Speaker, recently the gentleman from Tennessee (Mr. GORDON) and I joined to introduce the Sports Agent Responsibility and Trust Act.

Each year, hundreds of college athletes are offered illegal inducements to enter into contracts prior to the exhaustion of the athletes' eligibility by unscrupulous sports agents. Often these actions result in three major problems.

Number one, the loss of the athletes' eligibility. Personally, I experienced having a player back in the 1980s who was offered some illegal inducements, lost his eligibility, and pretty much ruined his career. That same player was involved with some agents who really had given illegal inducements to several players around the country. They were eventually indicted on a number of felonies. They threatened some of the players with bodily harm. However, in the State of Nebraska, we lacked the laws to pursue these agents.

Secondly, there is a financial loss to the athlete and the school when illegal agent offers are involved. Again, a personal note, I had a player back in the 1980s who thought he signed a contract for giving 3 percent of his proceeds to the agent, but somewhere buried in the contract was 13 percent. So he lost hundreds of thousands of dollars. Fortunately, that player was able to recover more than \$300,000 because the agent with which he had signed the illegal contract had previously come from the State of California, where there are laws that govern agents, and since that agent had not registered under California law, we were able to recover \$300,000. However, in the State of Nebraska we could not do this because Nebraska, again, had no law that would enable us to prosecute.

Recently, an agent named Tank Black was sentenced to 5 years in prison for swindling athletes for more than \$12 million, and so we think this is important. It also allows the schools to file civil lawsuits against unethical agents.

Thirdly, another issue that is very important, a negative perception of intercollegiate athletics often results when athletes enter into illegal contracts with agents. So the recent pre-

vious cases would involve the University of Alabama, University of Louisville, University of California, University of Utah, Texas Southern, University of Miami at Florida, University of Southern California, Tennessee, Ohio State, Texas A&M, Florida State and others, and in each one of these cases the school really did nothing illegal. It simply had some players that entered into illegal negotiations with agents, and of course, this reflected negatively on the school.

Currently 17 States in our country, including my home State of Nebraska, have no regulations governing sports agents. The legislation that we are proposing provides a uniform Federal backdrop that applies to all States. This bill does not supersede State law. It simply aids and abets those States that do have regulations governing sports agents.

This act brings sports agents under the jurisdiction of the Federal Trade Commission, which provides for a fine of \$11,000 per day per event. State laws cannot cross State borders. So until all 50 States adopt uniform standards there is not uniformity in the law regulating sports agents.

The Sports Agent Responsibility Act provides a separate Federal remedy for States Attorneys General to prosecute sports agents who attempt to exploit student athletes across State lines.

I urge my colleagues to join the gentleman from Tennessee (Mr. GORDON) and me as we try to protect intercollegiate athletics from unscrupulous sports agents.

CUBA'S DEVELOPMENT OF BIOLOGICAL WEAPONS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Jersey (Mr. PALLONE) is recognized for 5 minutes.

Mr. PALLONE. Mr. Speaker, I rise today to draw attention to a recent statement by the Bush administration confirming Cuba's development of a biological warfare program and the possible transfer of this knowledge to other rogue nations.

Mr. Speaker, Cuba is designated by the State Department as one of seven nations who sponsor international terrorism. However, since the collapse of the Soviet Union many Americans make the mistake of believing that Cuba is no longer a threat to our national security.

Recent votes here in the House have reflected this shift in public perception. Just 3 weeks ago we voted on a motion to instruct conferees on the farm bill to include a provision that would lift part of the trade embargo to allow for public financing of agricultural trade with Cuba. I opposed this motion because I feel that it is shortsighted to lift economic sanctions when the Cuban government has done little to prove their worthiness of an economic partnership with the United States.

DOCUMENT NO. 6

and Aquariums, the Humane Society of the United States, the Fund for Animals, and the International Fund for Animal Welfare.

I ask my colleagues to cosponsor this legislation and look forward to working with our partners in the House who have expressed interest in passing this bill into law by the end of this session.

By Mr. WYDEN:

S. 3039. A bill to designate certain conduct by sports agents relating to the signing of contracts with student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission; to the Committee on Commerce, Science, and Transportation.

Mr. WYDEN. Mr. President, I would like to say a few words about a bill I am introducing today, the Sports Agent Responsibility and Trust Act. The purpose of the bill is simple: to set some basic, uniform nationwide rules to prevent unscrupulous behavior by sports agents who court student athletes.

Too often, unscrupulous sports agents prey upon young student athletes who are inexperienced, naive, or simply don't know all of the collegiate athletic eligibility rules. The agent sees the student athlete as a potentially lucrative future client, and wants to get the biggest headstart possible on other agents. So the agent tries to contact and sign up the student athlete as early as possible, and does whatever it takes to get the inside track.

In some cases, the agent may attempt to lure the student athlete with grand promises. In some cases, the agent may offer flashy gifts. To make the offer more enticing, the agent may withhold crucial information about the impact on the student's eligibility to compete in college sports.

A majority of States have enacted statutes to address unprincipled behavior by sports agents, but the standards vary from State to State and some States don't have any at all. The University of Oregon tells me that this creates a significant loophole. Specifically, Oregon has a State law, but it doesn't apply when a University of Oregon athlete goes home to another State for the summer and is contacted by an agent there. Every time that athlete crosses into another State, a different set of rules apply. And if one State's laws on the subject are particularly weak, that is where shady sports agents will try to contact their targets.

That is why there ought to be a single, nationwide standard. The bill I am introducing today would establish a uniform baseline, enforceable by the Federal Trade Commission, that would supplement but not replace existing State laws. Specifically, the bill would make it an unfair and deceptive trade practice for a sports agent to entice a student athlete with false or misleading information or promises or

with gifts to the student athlete or the athlete's friends or family. It would require a sports agent to provide the student athlete with a clear, standardized warning, in writing, that signing an agency contract could jeopardize the athlete's eligibility to participate in college sports. It would make it unlawful to pre-date or post-date agency contracts, and require both the agent and student athlete to promptly inform the athlete's university if they do enter into a contract.

Representative BART GORDON of Tennessee has spearheaded this legislation in the House, where the House Commerce Committee has held hearings and, most recently, unanimously approved the bill on September 25. I applaud Congressman GORDON for his leadership on this issue, and I urge my Senate colleagues to join me in addressing this matter in the Senate.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3039

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Sports Agent Responsibility and Trust Act".

SEC. 2. DEFINITIONS.

As used in this Act, the following definitions apply:

(1) **AGENCY CONTRACT.**—The term "agency contract" means an oral or written agreement in which a student athlete authorizes a person to negotiate or solicit on behalf of the student athlete a professional sports contract or an endorsement contract.

(2) **ATHLETE AGENT.**—The term "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, and does not include a spouse, parent, sibling, grandparent, or guardian of such student athlete, or an individual acting solely on behalf of a professional sports team or professional sports organization.

(3) **ATHLETIC DIRECTOR.**—The term "athletic director" means an individual responsible for administering the athletic program of an educational institution or, in the case that such program is administered separately, the athletic program for male students, or the athletic program for female students, as appropriate.

(4) **COMMISSION.**—The term "Commission" means the Federal Trade Commission.

(5) **ENDORSEMENT CONTRACT.**—The term "endorsement contract" means an agreement under which a student athlete is employed or receives consideration for the use by the other party of that individual's person, name, image, or likeness in the promotion of any product, service, or event.

(6) **INTERCOLLEGIATE SPORT.**—The term "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 college athletics.

(7) **PROFESSIONAL SPORTS CONTRACT.**—The term "professional sports 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.

(8) **STATE.**—The term "State" includes 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.

(9) **STUDENT ATHLETE.**—The term "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. An individual who is permanently ineligible to participate in a particular intercollegiate sport is not a student athlete for purposes of that sport.

SEC. 3. REGULATION OF UNFAIR AND DECEPTIVE ACTS AND PRACTICES IN CONNECTION WITH THE CONTRACT BETWEEN AN ATHLETE AGENT AND A STUDENT ATHLETE.

(a) **CONDUCT PROHIBITED.**—It is unlawful for an athlete agent to—

(1) directly or indirectly recruit or solicit a student athlete to enter into an agency contract, by—

(A) giving any false or misleading information or making a false promise or representation; or

(B) providing anything of value to a student athlete or anyone associated with the student athlete before the student athlete enters into an agency contract;

(2) enter into an agency contract with a student athlete without providing the student athlete with the disclosure document described in subsection (b); or

(3) predate or postdate an agency contract.

(b) **REQUIRED DISCLOSURE BY ATHLETE AGENTS TO STUDENT ATHLETES.**

(1) **IN GENERAL.**—In conjunction with the entering into of an agency contract, an athlete agent shall provide to the student athlete, or, if the student athlete is under the age of 18 to such student athlete's parent or legal guardian, a disclosure document that meets the requirements of this subsection. Such disclosure document is separate from and in addition to any disclosure which may be required under State law.

(2) **SIGNATURE OF STUDENT ATHLETE.**—The disclosure document must be signed by the student athlete, or, if the student athlete is under the age of 18 by such student athlete's parent or legal guardian, prior to entering into the agency contract.

(3) **REQUIRED LANGUAGE.**—The disclosure document must contain, in close proximity to the signature of the student athlete, or, if the student athlete is under the age of 18, the signature of such student athlete's parent or legal guardian, a conspicuous notice in bold-face type stating: "Warning to Student Athlete: If you agree orally or in writing to be represented by an agent now or in the future you may lose your eligibility to compete as a student athlete in your sport. Within 72 hours after entering into this contract or before the next athletic event in which you are eligible to participate, whichever occurs first, both you and the agent by whom you are agreeing to be represented must notify the athletic director of the educational institution at which you are enrolled, or other individual responsible for athletic programs at such educational institution, that you have entered into an agency contract."

SEC. 4. ENFORCEMENT.

(a) **UNFAIR OR DECEPTIVE ACT OR PRACTICE.**—A violation of this Act shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 16(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(b) **ACTIONS BY THE COMMISSION.**—The Commission shall enforce this Act in the same manner, by the same means, and with the

same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act.

SEC. 5. ACTIONS BY STATES.

(A) IN GENERAL.—

(1) CIVIL ACTIONS.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any athlete agent in a practice that violates section 3 of this Act, the State may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—

- (A) enjoin that practice;
- (B) enforce compliance with this Act;
- (C) obtain damages, restitution, or other compensation on behalf of residents of the State; or
- (D) obtain such other relief as the court may consider to be appropriate.

(2) NOTICE.—

(A) IN GENERAL.—Before filing an action under paragraph (1), the attorney general of the State involved shall provide to the Commission—

- (1) written notice of that action; and
 - (2) a copy of the complaint for that action.
- (B) EXEMPTION.—Subparagraph (A) shall not apply with respect to the filing of an action by an attorney general of a State under this subsection, if the attorney general determines that it is not feasible to provide the notice described in that subparagraph before filing of the action. In such case, the attorney general of a State shall provide notice and a copy of the complaint to the Commission at the same time as the attorney general files the action.

(3) INTERVENTION.—

(1) IN GENERAL.—On receiving notice under subsection (a)(2), the Commission shall have the right to intervene in the action that is the subject of the notice.

(2) EFFECT OF INTERVENTION.—If the Commission intervenes in an action under subsection (a), it shall have the right—

- (A) to be heard with respect to any matter that arises in that action; and
- (B) to file a petition for appeal.

(c) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this title shall be construed to prevent an attorney general of a State from exercising the powers conferred the attorney general by the laws of that State to—

- (1) conduct investigations;
- (2) administer oaths or affirmations; or
- (3) compel the attendance of witnesses or the production of documentary and other evidence.

(d) ACTIONS BY THE COMMISSION.—In any case in which an action is instituted by or on behalf of the Commission for a violation of section 3, no State may, during the pendency of that action, institute an action under subsection (a) against any defendant named in the complaint in that action—

(e) VENUE.—Any action brought under subsection (a) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

(f) SERVICE OF PROCESS.—In an action brought under subsection (a), process may be served in any district in which the defendant—

- (1) is an inhabitant; or
- (2) may be found.

SEC. 6. PROTECTION OF EDUCATIONAL INSTITUTION.

(a) NOTICE REQUIRED.—Within 72 hours after entering into an agency contract or before the next athletic event in which the stu-

dent athlete may participate, whichever occurs first, the athlete agent and the student athlete shall each inform the athletic director of the educational institution at which the student athlete is enrolled, or other individual responsible for athletic programs at such education institution, that the student athlete had entered into an agency contract, and the athlete agency shall provide the athletic director with notice in writing of such a contract.

(b) CIVIL REMEDY.—

(1) IN GENERAL.—An educational institution has a right of action against an athlete agent for damages caused by a violation of this Act.

(2) DAMAGES.—Damages of an educational institution may include losses and expenses incurred because, as a result of the conduct of the athlete agent, the educational institution was injured by a violation of this Act 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 actions likely to be imposed by such an association or conference.

(3) COSTS AND ATTORNEYS FEES.—In an action taken under this section, the court may award to the prevailing party costs and reasonable attorneys fees.

(4) EFFECT ON OTHER RIGHTS, REMEDIES AND DEFENSES.—This section does not restrict the rights, remedies, or defenses of any person under law or equity.

SEC. 7. SENSE OF CONGRESS.

It is the sense of Congress that States should enact the Uniform Athlete Agents Act of 2000 drafted by the National Conference of Commissioners on Uniform State Laws, to protect student athletes and the integrity of amateur sports from unscrupulous sports agents. In particular, it is the sense of the Congress that States should enact the provisions relating to the registration of sports agents, the required form of contract, the right of the student athlete to cancel an agency contract, the disclosure requirements relating to record maintenance, reporting, renewal, notice, warning, and security, and the provisions for reciprocity among the States.

By Mr. HATCH:

S. 3041. A bill to require the Secretary of Health and Human Services to conduct a study and submit a report to Congress on new technology payments under the Medicare prospective payment system for hospital outpatient department services; to the Committee on Finance.

Mr. HATCH. Mr. President, since Utah is the home of many medical device and pharmaceutical companies, I have taken a special interest in legislation affecting the development of cutting-edge technologies and the ability of patients to have access to these innovative products. Three years ago, I authored legislation to ensure that Medicare patients have prompt and appropriate access to the abundant benefits of medical breakthrough products. Prior to the enactment of that law, these innovative technologies were not being properly reimbursed by the Medicare program or, in some cases, were not even being reimbursed by Medicare at all. As a result, patient care suffered.

And, while the 1999 law was a giant step in the right direction, many prob-

lems continue to exist regarding the methodology that Medicare has used in developing its hospital outpatient reimbursement payments for these new devices and medicines.

I have been working throughout the year with all parties who have a stake in improving the hospital outpatient prospective payment system methodology for new medical devices, drugs, biologicals, and other technologies. I have listened to the arguments from both the Centers for Medicare and Medicaid Services, CMS, and the industry and recognize that there are problems with this methodology from all perspectives.

And while, in my opinion, a legislative solution would be ideal, so far, we have been unable to draft legislation that would be acceptable to both CMS and industry representatives. Therefore, I now believe that authorizing a comprehensive study through the Department of Health and Human Services is the appropriate next step toward defining the flaws within the current system and developing consensus on how to address them. For this reason, I now advocate that CMS undertake such a study, and also provide recommendations to Congress on how to improve Medicare reimbursement for these products.

This matter is a serious one which needs to be reviewed and analyzed by HHS so that a more equitable reimbursement system may be created. We all agree that Medicare beneficiaries deserve access to most innovative medical technologies. In my opinion, this HHS study will help us accomplish two very important goals, fair and equitable Medicare reimbursement for innovative technology and therapies and, most important, beneficiary access to these cutting-edge products.

By Mr. HATCH:

S. 3043. A bill to provide for an extension of the social health maintenance organization (SHMO) demonstration project; to the Committee on Finance.

Mr. HATCH. Mr. President, the Social Health Maintenance Organization Demonstration Project is due to expire in the next year. I have been a strong supporter of extending the SHMO demonstration project, because these plans help keep seniors independent and out of nursing homes. SHMOs provide beneficiaries with expanded Medicare benefits, including prescription drugs, care coordination and community-based services. While many of us are working toward making this a permanent program, it has now become clear that we will not be able to accomplish this goal this year because of budget constraints. Therefore, I offer as the next best solution extending the SHMO demonstration project for five more years. This way, SHMOs will continue to operate, and those beneficiaries who receive their Medicare coverage through SHMOs will continue to receive important services and benefits.

By Mr. DURBIN (for himself and Mr. VONOVICH):

DOCUMENT NO. 7

In addition, Mr. Speaker, the Citadel, down in South Carolina, is reviewing its policy since that Federal court ruling. And also, Mr. Speaker, I hate to even mention this, but the academy in Annapolis is also reviewing its policy. The American Civil Liberties Union of Maryland is calling on the academy to review its practices of leading the students in prayer.

Mr. Speaker, let me also share with my colleagues that it was just a few months ago that the Ninth Circuit Court of Appeals ruled to have "under God" taken from our Pledge of Allegiance.

How much longer will we stand by and allow others to ignore the very God upon whom our Nation was founded? Our Constitution demands the freedom to worship freely; and our future leaders, our men and women in the military academies across the country, are now being denied the very freedom that many have died to ensure for all of us.

Mr. Speaker, it is not just sad; it is completely detestable. And on this National Day of Prayer, let us honor our heroes, those who have returned home and those who sacrificed their lives, by standing against those liberals who would seek to challenge their God-given right to pray for a living Lord.

In closing, Mr. Speaker, I believe this quote says it best, and it comes from the days of Jefferson and Adams. And the quote is this, Mr. Speaker: "Religion can survive in the absence of freedom. But freedom without religion is dangerous and unstable."

Mr. Speaker, I have three military bases in my district, Camp Lejeune, Cherry Point, and Seymour Johnson Air Force Base. I want to close by asking God to please bless our men and women in uniform and their families, and the families of those who have lost loved ones defending freedom in this country. I close by asking three times, "God, please, God, please, God, please continue to bless America."

COMING HOME: WELCOMING OUR TROOPS WITH CUTS IN VETERANS PROGRAMS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. FILNER) is recognized for 5 minutes.

Mr. FILNER. Mr. Speaker, I rise to express my concern for the men and women of our armed services who will be returning and are returning from Iraq. My colleagues are aware that our troops were funded during the period of fighting last month at the rate of about \$1 billion, \$1 billion, every 2 or 3 days.

Now, we did not want our troops to go without having everything that they needed for success, but if we have the money to send our troops to war, we must, Mr. Speaker, have the money for them when they return. To abandon them upon their return shows disrespect for those who have willingly

risked all when their Nation called them to serve.

In the next few months, Congress will be voting on the veterans budget. The House Republican budget that came through this House was outrageous. It cut veterans benefits by \$25 billion over the next 10 years, and they took that vote right after a resolution expressing support for our troops. Now, the final budget resolution we passed corrected some of the most glaring problems in that budget, but it is still \$1 billion less for the health care for our veterans in the coming year. One billion dollars. That would fund approximately 5,000 doctors, 10,000 nurses, or three million additional outpatient visits.

Over the next 10 years, the budget falls far short of what will be needed to keep up with inflation and with the growing number of veterans who were using the veterans health care system. We must fight during the appropriation process for a budget that is worthy of our returning veterans. We cannot ignore their rights and their needs. Veterans health care is one of the most important issues that we fund.

We hope and pray that we do not have veterans from the current conflict who become ill with Gulf War illness, but we must prepare for that possibility. And we must not forget the warriors of the first Gulf War who are sick, tens of thousands of them, and are still waiting to learn the cause and the cure for their illnesses.

Of course, Mr. Speaker, we need to change the whole process of funding our veterans health care. Right now, each year in Congress, as we are doing this year, we have to fight for a health care budget. In the last session, there was legislation to change VA health care funding so that the amount of funding would automatically, automatically rise each year to accommodate inflation and new enrollees, that is, for example, to accommodate the returning veterans from Iraq. I will again, and I urge all my colleagues, to cosponsor this bill when it is reintroduced this session. And we must work hard for its passage.

Right now, Mr. Speaker, 200,000 veterans are waiting more than 6 months for their first health care appointment. In fact, veterans will die while waiting for that first appointment. We must resolve to change this immoral situation.

When our active-duty soldiers from the war in Iraq leave service, many are qualified for educational benefits under the Montgomery GI bill. This is an earned benefit that allows them to re-enter civilian life as educated and productive members. But the current GI bill benefits are woefully inadequate to do the job. Back in 1944, this bill paid for the full cost of college tuition. But now it barely pays for two-thirds of the average cost of attending a 4-year public college. We must work to provide funding for the full cost of tuition fees, books, and supplies for those who do serve 4 years of active duty in the military service.

I could go on and on, Mr. Speaker, because there are so many other areas that need more funding than is currently budgeted. We will soon be commemorating Memorial Day. We will be hearing words of support for our veterans from all Members of Congress as they speak to Memorial Day crowds. But words can be cheap. What is important is how we vote.

We have the money. We have the resources. It is a question of priorities. It is a question of will. Let us make our veterans, who are returning from war, proud of us.

There is one final thing I want to say. A substantive way we can assist our veterans is to guarantee them jobs with companies that are awarded government contracts to rebuild Iraq, and I have introduced a bill to do just that. It is called the Let U.S. Veterans Rebuild Iraq Act, which will treat our veterans with the respect they deserve and provide a tangible way to better their lives. They fought for freedom in Iraq, who better to get involved in securing the future for Iraq?

H.R. 361, THE SPORTS AGENT RESPONSIBILITY AND TRUST ACT (SPARTA)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Nebraska (Mr. OSBORNE) is recognized for 5 minutes.

Mr. OSBORNE. Mr. Speaker, last weekend, the National Football League draft was conducted. Over 200 players were selected in the draft. Each player eventually will be represented by an agent. The difficult thing is that many of these people who call themselves agents have no special qualifications.

We find that many of them have no legal training, no expertise in writing contracts, some misrepresent themselves, some offer illegal inducements, particularly to undergraduates, such as cars, cash, clothes, and sometimes even drugs, to get young people to commit to a contract while they still have eligibility, which makes them ineligible, of course. A few even have criminal records. Most of them will tell a player that they will get them drafted higher.

The NFL committee will say, well, you are going to be a fourth-round pick; and these agents say, well, if you come with me, I will get you a trainer and a nutritionist, and we will make you a first-round pick, which obviously does not happen. And then some even get the power of attorney, which sometimes bankrupts these individuals.

The National Football League Players Association currently says that roughly one-half of the players leaving the National Football League have no money. The minimum salary is several hundred thousand dollars. Some guys make millions of dollars; some sign for \$10 million or \$11 million. Yet at the end of their career, nearly one-half have no money left. A lot of that is due simply to the issue of the way they are treated by their agents.

Every coach and athletic director that I know says this is a huge problem and that we need some type of uniform standards and regulations to govern sports agents. One of the biggest problems that we have is these people come on the campus and nobody knows they are there. They see the players in the dorms; they harass them and call them on the phone. Some of the better players end up having to get unlisted phone numbers because of all the harassment. Currently, Mr. Speaker, there are only 15 States that have tough laws regulating actions by sports agents. There are 17 States, including my home State of Nebraska, that have no laws at all regulating sports agents, and then there are 18 States remaining that have some laws. It is kind of a hodgepodge, a patchwork; and there is no consistency and no teeth in the regulations. So the majority of young people coming out of college really are not protected by any laws that would govern sports agents.

With this problem in mind, the gentleman from Tennessee (Mr. GORDON) and I have introduced H.R. 361, the Sports Agent Responsibility and Trust Act, which is also known as SPARTA. SPARTA protects student athletes by making it illegal for sports agents to entice student athletes with false or misleading information, promises, or representations in order to lure them into a contract. SPARTA would protect student athletes when they travel to other States.

Some student athletes are in States with some laws, but once they go home for the summer in another State or go to a bowl game, sometimes they are preyed upon by sports agents in those areas. So this provides a uniform Federal backstop. It does not supplant State laws, and we feel it is a very sound piece of legislation.

As of April 2002, the National Football League Players Association reported 1,200 certified football agents. Eight hundred of those represent no clients. Now, those are the guys that are really not very well qualified, and they are particularly dangerous because they are desperate to represent somebody. So they will make almost any kind of a deal, any kind of a promise to get someone committed.

We think, of course, that this is obviously a huge problem. But let me just cite two cases from my own experience. One: we were getting on the bus to go to the Orange Bowl, and I could not find my quarterback two hours before kickoff. I finally located him in one corner of the lobby cornered by two agents that he had never seen before, I had never heard of before, and were obviously unscrupulous; and they are hammering this guy to try to get him to sign a contract right before a kickoff. Well, of course, this did not do the quarterback any good, and it did not do me any good either.

In one other case we had a young man who was contacted at his home during the summer and he signed a

contract. He did not really understand what he signed, but buried in the fine print was a 13 percent commission for the agent. So the agent got several hundred thousand dollars from this young man. Fortunately, the agent was from a State that did have some laws governing agents, and this agent had not registered. So we were able to recover \$300,000 of this young man's money because of some sports agent legislation.

So what we are saying is we need this kind of protection for all athletes in all States. It is a Federal backstop. We think this is sound legislation, and I urge my colleagues to cosponsor H.R. 361, the Sports Agent Responsibility and Trust Act.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from the District of Columbia (Ms. NORTON) is recognized for 5 minutes.

(Ms. NORTON, addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

PEACE RETURNS TO VIEQUES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Puerto Rico (Mr. ACEVEDO-VILÁ) is recognized for 5 minutes.

Mr. ACEVEDO-VILÁ. Mr. Speaker, a couple of years ago, I met a young girl from Vieques by the name of Marakiani Olivencia. She came up to me with a small container of sand in her hand and shared with me her desire to return that sand to Vieques with me after the Navy bombing practices ended.

With passion and sincerity this girl represented what so many had felt for so long. I told her that sooner or later such a day would come, and we would return that sand to Vieques together.

□ 1600

Indeed, such a day is upon us. As of today, Vieques is no longer a Navy bombing range, and has become the newest addition to the National Wildlife Refuge System. I have with me a copy of the letter and memorandum of agreement signed between the Navy and the Fish and Wildlife Service making official that land transfer and ask that it be made part of the Record.

For the first time in over 60 years, Vieques awoke this morning, their island not having been bombed last night, the island not to be bombed today, and knowing for certain that the island shall never be bombed again. Now the shore of Vieques will be dominated only by the sound of the surf, the birds, and the wind. The thousands of Puerto Ricans living in Vieques achieved their long-sought peace. Today "Pas para Vieques" is a reality.

For generations, the Viequeses have not known life without bombing. Thousands of families have lived their whole

life with the concussion of bombs and shells upon their island at night, during the day, in the coastal waters.

Vieques became a bombing and training range for the Navy in the 1940s during World War II. Without a doubt, much has been changed since then. While the bombing has continued, awareness about the island of Vieques has grown. Viequeses and Puerto Ricans reached out, and shared with people what was happening to their island. Well, over a hundred Members of Congress actively supported bringing an end to the bombing. I must note a few of them, particularly the members of the Congressional Hispanic Caucus and my colleagues, the gentleman from Illinois (Mr. GUTIERREZ), the gentleman from New York (Ms. VELÁZQUEZ) and the gentleman from New York (Mr. SERRANO). I must also thank the gentleman from Missouri (Mr. SKELTON), ranking member of the Committee on Armed Services, the Congressional Black Caucus, activists, and many common citizens of the United States and elsewhere who became involved in the effort to return peace and to end bombing of the island of Vieques.

Puerto Ricans also enjoyed strong leadership on this issue by President Bill Clinton and President Bush, who both realized that this was an issue of human rights and the citizens of Puerto Rico have suffered for too long. Having worked with the White House and both Commanders-in-Chief on this issue, I know that our national security and the well-being of thousands of citizens in Vieques were taken into consideration when making this determination.

On behalf of Puerto Rico, I thank President Clinton and President Bush for ending the bombing of Vieques. Puerto Rico will never forget your resolute commitment. Today is a day of discovery, wonderment and joy.

Unfortunately, last night a small group of people rushed the fence of the range and recklessly overturned vehicles, set fires and destroyed government property. It is unfortunate that some have undermined the peaceful protest of the past. Prayers of thanks, fireworks, parades and excitement will accompany the joy of today. I strongly condemn those few who have shown disrespect to the United States, Puerto Rico and Vieques. All must know that the overwhelming majority of Puerto Ricans are proud of their bond with the United States, and our support for the common defense is resolute.

While we celebrate the end of the bombing, much work remains. Over 60 years of explosions, bombings, waste disposal and burning have left much of the Vieques range littered with a deadly combination of unexploded ordnance and toxic chemicals. I am confident that in cooperation with EPA, Fish and Wildlife, the Pentagon, the Puerto Rican government and Vieques, we will be able to reclaim this land.

So to Marikiani, the young girl who brought me the sand from Vieques, I

DOCUMENT NO. 8

amendment regarding the Corporate Average Fuel Economy standards for cars, SUV's, and light trucks. Given the instability in the Middle East and our Nation's reliance on foreign oil, Senator CARPER and I offered additional language to slow the growth of our dependency on oil in a measurable way on the energy bill.

I supported the Levin-Bond amendment because, among other things, it would have invested Federal dollars in research and development of advanced technology vehicles. It would have harnessed the power of government to purchase and commercialize hybrid and fuel cell-powered vehicles. I also supported the amendment's accompanying tax incentives, which would further encourage the production and purchase of advanced, fuel-efficient vehicles.

However, the Levin-Bond amendment fell short in one important area - it did not include a clear, measurable objective for oil savings. The issue is not just the Corporate Average Fuel Efficiency, CAFÉ, or Miles Per Gallon, MPC—rather it is oil and our growing dependence on imports for 56 percent of what we use. The bill I am introducing today would implement the Levin-Bond requirement that the Secretary of Transportation issue new regulations setting forth increased average fuel economy standards and further require that the Secretary of Transportation issue regulations to reduce the amount of oil consumed in our passenger cars and light trucks in 2015 by 1,000,000 barrels per day compared to consumption without such regulations in place.

Federal research has identified promising fuel technologies, including fuels developed from biomass, coal waste, and other sources that could play a role in reducing our dependence on traditional, foreign crude oil and facilitate a transition to advanced fuels. For example, one important effort that is happening in Pennsylvania involves a recent \$100 million U.S. Department of Energy grant to build the first U.S. coal-waste-to-clean-fuel plant. This \$612 million plant is expected to produce 5,000 barrels of sulfur-free diesel or other types of transportation fuel daily. This will have the multiple benefits of removing coal waste, reducing acid mine drainage, producing fuels that will reduce air pollution, and using a domestic energy supply, thus reducing the need to import foreign oil. The bill I am introducing today tasks the Department of Energy to work with the Department of Transportation to develop and encourage such technologies.

America uses about 8 million barrels of oil daily to power the vehicles that we drive. The Department of Energy forecasts that this amount will climb to 10.6 million barrels per day by 2015, an increase of over 35 percent. I propose to limit that growth to 23 percent, or 8.6 million barrels.

America's national security is jeopardized by our growing dependence on foreign oil. Oil imports now account for

a third of our nation's trade deficit, which exceeded \$400 billion in 2001. I will continue to raise the issue of the untenable position the United States is in by relying on oil from the Middle East. This is highlighted by the fact that we continue to see suicide bombings in Israel and new attacks in other Middle Eastern nations such as Saudi Arabia and Morocco.

Additionally, the exhausts of our motor vehicles are the source of significant amounts of air pollution, including a quarter of the carbon dioxide emitted into our atmosphere, which is cited as a lead contributor to global climate change.

To address these concerns, Congress need not attempt to micro manage a solution by setting higher CAFÉ levels. We should, however, set a clear, measurable objective—reducing the growth in oil consumption by at least a million barrels per day by 2015. We should then delegate to NHTSA, as the energy bill would have accomplished last year under the Levin-Bond amendment and my legislation does, the responsibility for working with the auto industry to achieve that objective. That approach will encourage American ingenuity and foster a public-private partnership that recognizes the interests of consumers and auto makers, as well as furthering public policy that will help relieve the very significant and dangerous policy of relying on our economy's lifeblood of oil from unstable regions.

As this body considers energy legislation, I encourage my colleagues to consider the importance of taking appropriate steps to reduce our dependence on foreign sources of energy, particularly oil. I invite my colleagues to join me in this effort by cosponsoring this legislation.

By Mr. WYDEN:

S. 1170. A bill to designate certain conduct by sports agents relating to signing of contracts with student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission; to the Committee on Commerce, Science, and Transportation.

Mr. WYDEN. Mr. President, summer is upon us. For many college athletes, that means leaving campus and heading back to a home in a different state. Some may take the opportunity to do some traveling, or even to attend sports camps in various parts of the country.

Unfortunately, this well-earned break can carry real risks for the athletes and their schools. Why? Because traveling student athletes may be big targets for opportunistic sports agents—and due to highly inconsistent state laws on the subject, the legal protections that an athlete might enjoy in the state where the college is located don't necessarily apply elsewhere.

Today I am reintroducing a bill to address this issue, the Sports Agent Responsibility and Trust Act. The purpose of the bill is simple: to set some

basic, uniform nationwide rules to prevent unscrupulous behavior by sports agents who court student athletes. The universities in Oregon with top athletic programs—the University of Oregon, Oregon State University, and Portland State University—have all provided letters of endorsement for this legislation. So has the NCAA.

Too often, unscrupulous sports agents prey upon young student athletes who are inexperienced, naive, or simply don't know all of the collegiate athletic eligibility rules. The agent sees the student athlete as a potentially lucrative future client, and wants to get the biggest headstart possible on other agents. So the agent tries to contact and sign up the student athlete as early as possible, and does whatever takes to get the inside track.

In some cases, the agent may attempt to lure the student athlete with grand promises. In some cases, the agent may offer flashy gifts. To make the offer more enticing, the agent may withhold crucial information about the impact on the student's eligibility to compete in college sports.

A majority of States have enacted statutes to address unprincipled behavior by sports agents, but the standards vary from State to State and some states don't have any at all. The universities in my State of Oregon tell me that this creates a significant loophole. Specifically, Oregon has a State law, but it doesn't apply when, for example, a University of Oregon athlete goes home to another State for the summer and is contacted by an agent there. Every time that athlete crosses into another State a different set of rules apply. And if one State's laws on the subject are particularly weak, that is where shady sports agents will try to contact their targets.

That is why there ought to be a single, nationwide standard. The bill I am introducing today would establish a uniform baseline, enforceable by the Federal Trade Commission, that would supplement but not replace existing state laws. Specifically, the bill would make it an unfair and deceptive trade practice for a sports agent to entice a student athlete with false or misleading information or promises or with gifts to the student athlete or the athlete's friends or family. It would require a sports agent to provide the student athlete with a clear, standardized warning in writing, that signing an agency contract could jeopardize the athlete's eligibility to participate in college sports. It would make it unlawful to pre-date or post-date agency contracts, and require both the agent and student athlete to promptly inform the athlete's university if they do enter into a contract.

Representative BART GORDON of Tennessee has spearheaded this legislation in the House, where the Energy and Commerce Committee and the Judiciary Committee have both considered and approved the bill this year. I'm told that consideration on the House

floor could occur this week. I applaud Congressman GORDON for his leadership on this issue, and I urge my Senate colleagues to join me in addressing this matter in the Senate.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1170

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Sports Agent Responsibility and Trust Act".

SEC. 2. DEFINITIONS.

As used in this Act, the following definitions apply:

(1) **AGENCY CONTRACT.**—The term "agency contract" means an oral or written agreement in which a student athlete authorizes a person to negotiate or solicit on behalf of the student athlete a professional sports contract or an endorsement contract.

(2) **ATHLETE AGENT.**—The term "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, and does not include a spouse, parent, sibling, grandparent, or guardian of such student athlete, any legal counsel for purposes other than that of representative agency, or an individual acting solely on behalf of a professional sports team or professional sports organization.

(3) **ATHLETIC DIRECTOR.**—The term "athletic director" means an individual responsible for administering the athletic program of an educational institution or, in the case that such program is administered separately, the athletic program for male students or the athletic program for female students, as appropriate.

(4) **COMMISSION.**—The term "Commission" means the Federal Trade Commission.

(5) **ENDORSEMENT CONTRACT.**—The term "endorsement contract" means an agreement under which a student athlete is employed or receives consideration for the use by the other party of that individual's person, name, image, or likeness in the promotion of any product, service, or event.

(6) **INTERCOLLEGIATE SPORT.**—The term "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 college athletics.

(7) **PROFESSIONAL SPORTS CONTRACT.**—The term "professional sports 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.

(8) **STATE.**—The term "State" includes 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.

(9) **STUDENT ATHLETE.**—The term "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. An individual who is permanently ineligible to participate in a particular intercollegiate sport is not a student athlete for purposes of that sport.

SEC. 3. REGULATION OF UNFAIR AND DECEPTIVE ACTS AND PRACTICES IN CONNECTION WITH THE CONTACT BETWEEN AN ATHLETE AGENT AND A STUDENT ATHLETE.

(a) **CONDUCT PROHIBITED.**—It is unlawful for an athlete agent to—

(1) directly or indirectly recruit or solicit a student athlete to enter into an agency contract, by—

(A) giving any false or misleading information or making a false promise or representation; or

(B) providing anything of value to a student athlete or anyone associated with the student athlete before the student athlete enters into an agency contract including any consideration in the form of a loan, or acting in the capacity of a guarantor or co-guarantor for any debt;

(2) enter into an agency contract with a student athlete without providing the student athlete with the disclosure document described in subsection (b); or

(3) predate or postdate an agency contract.

(b) **REQUIRED DISCLOSURE BY ATHLETE AGENTS TO STUDENT ATHLETES.**—

(1) **IN GENERAL.**—In conjunction with the entering into of an agency contract, an athlete agent shall provide to the student athlete, or, if the student athlete is under the age of 18 to such student athlete's parent or legal guardian, a disclosure document that meets the requirements of this subsection. Such disclosure document is separate from and in addition to any disclosure which may be required under State law.

(2) **SIGNATURE OF STUDENT ATHLETE.**—The disclosure document must be signed by the student athlete, or, if the student athlete is under the age of 18 by such student athlete's parent or legal guardian, prior to entering into the agency contract.

(3) **REQUIRED LANGUAGE.**—The disclosure document must contain, in close proximity to the signature of the student athlete, or, if the student athlete is under the age of 18, the signature of such student athlete's parent or legal guardian, a conspicuous notice in bold-face type stating: "Warning to Student Athlete: If you agree orally or in writing to be represented by an agent now or in the future you may lose your eligibility to compete as a student athlete in your sport. Within 72 hours after entering into this contract or before the next athletic event in which you are eligible to participate, whichever occurs first, both you and the agent by whom you are agreeing to be represented must notify the athletic director of the educational institution at which you are enrolled, or other individual responsible for athletic programs at such educational institution, that you have entered into an agency contract."

SEC. 4. ENFORCEMENT.

(a) **UNFAIR OR DECEPTIVE ACT OR PRACTICE.**—A violation of this Act shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a)(1)(B)).

(b) **ACTIONS BY THE COMMISSION.**—The Commission shall enforce this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act.

SEC. 5. ACTIONS BY STATES.

(1) **CIVIL ACTIONS.**—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any athlete agent in a practice that violates section 3 of this Act, the State may bring a civil action

on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—

(A) enjoin that practice;

(B) enforce compliance with this Act; or

(C) obtain damage, restitution, or other compensation on behalf of residents of the State.

(2) **NOTICE.**—

(A) **IN GENERAL.**—Before filing an action under paragraph (1), the attorney general of the State involved shall provide to the Commission—

(i) written notice of that action; and

(ii) a copy of the complaint for that action.

(B) **EXEMPTION.**—Subparagraph (A) shall not apply with respect to the filing of an action by an attorney general of a State under this subsection, if the attorney general determines that it is not feasible to provide the notice described in that subparagraph before filing of the action. In such case, the attorney general of a State shall provide notice and a copy of the complaint to the Commission at the same time as the attorney general files the action.

(C) **INTERVENTION.**—

(1) **IN GENERAL.**—On receiving notice under subsection (a)(2), the Commission shall have the right to intervene in the action that is the subject of the notice.

(2) **EFFECT OF INTERVENTION.**—If the Commission intervenes in an action under subsection (a), it shall have the right—

(A) to be heard with respect to any matter that arises in that action; and

(B) to file a petition for appeal.

(C) **CONSTRUCTION.**—For purposes of bringing any civil action under subsection (a), nothing in this title shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

(1) conduct investigations;

(2) administer oaths or affirmations; or

(3) compel the attendance of witnesses or the production of documentary and other evidence.

(d) **ACTIONS BY THE COMMISSION.**—In any case in which an action is instituted by or on behalf of the Commission for a violation of section 3, no State may, during the pendency of that action, institute an action under subsection (a) against any defendant named in the complaint in that action.

(e) **VENUE.**—Any action brought under subsection (a) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

(f) **SERVICE OF PROCESS.**—In an action brought under subsection (a), process may be served in any district in which the defendant—

(1) is an inhabitant; or

(2) may be found.

SEC. 6. PROTECTION OF EDUCATIONAL INSTITUTION.

(a) **NOTICE REQUIRED.**—Within 72 hours after entering into an agency contract or before the next athletic event in which the student athlete may participate, whichever occurs first, the athlete agent and the student athlete shall each inform the athletic director of the educational institution at which the student athlete is enrolled, or other individual responsible for athletic programs at such educational institution, that the student athlete has entered into an agency contract, and the athlete agent shall provide the athletic director with notice in writing of such a contract.

(b) **CIVIL REMEDY.**—

(1) **IN GENERAL.**—An educational institution has a right of action against an athlete agent for damages caused by a violation of this Act.

(2) **DAMAGES.**—Damages of an educational institution may include and are limited to

actual losses and expenses incurred because, as a result of the conduct of the athlete agent, the educational institution was injured by a violation of this Act 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 actions likely to be imposed by such an association or conference.

(3) **COSTS AND ATTORNEYS FEES.**—In an action taken under this section, the court may award to the prevailing party costs and reasonable attorneys fees.

(4) **EFFECT ON OTHER RIGHTS, REMEDIES AND DEFENSES.**—This section does not restrict the rights, remedies, or defenses of any person under law or equity.

SEC. 7. LIMITATION.

Nothing in the Act shall be construed to prohibit an individual from seeking any remedies available under existing State law or equity.

SEC. 8. SENSE OF CONGRESS.

It is the sense of Congress that States should enact the Uniform Athlete Agents Act of 2000 drafted by the National Conference of Commissioners on Uniform State Laws, to protect student athletes and the integrity of amateur sports from unscrupulous sports agents. In particular, it is the sense of Congress that States should enact the provisions relating to the registration of sports agents, the required form of contract, the right of the student athlete to cancel an agency contract, the disclosure requirements relating to record maintenance, reporting, renewal, notice, warning, and security, and the provisions for reciprocity among the States.

By Mr. FRIST (for himself, Mr. BINGAMAN, Mr. DODD, Mr. DEWINE, Mrs. CLINTON, Mr. WARNER, Mrs. MURRAY, Mr. LUGAR, Ms. LANDRIEU, Mr. SESSIONS, and Mr. ALEXANDER):

S. 1172. A bill to establish grants to provide health services for improved nutrition, increased physical activity, obesity prevention, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. FRIST. Mr. President, I rise today to discuss a particular public health problem—the growing rates of obesity. This epidemic has steadily increased to a level twice what it was thirty years ago. Obesity now affects over sixty percent of adults and thirteen percent of children and adolescents. Among young people, it is escalating at an alarming rate. This condition causes three hundred thousand deaths a year and is second only to smoking as the Nation's leading cause of preventable death. Overweight and obesity are associated with increased risk for heart disease, the leading cause of death, cancer, the second leading cause of death, diabetes, the seventh leading cause of death, and musculoskeletal disorders. Anyone with this condition has at least a 50 percent chance of a premature death.

As obesity continues to mount, the morbidity, mortality and health care costs associated with these disorders will skyrocket. Just this last month, a Health Affairs article estimated that nearly one-tenth of U.S. health care

costs are attributable to conditions resulting from obesity or being overweight. In 2002 dollars, the authors of this article estimate that obesity and overweight-related conditions cost \$32.6 billion. Of which, half is financed by Medicare and Medicaid.

Healthy People 2010 calls overweight and obesity one of the Nation's leading health problems and prioritizes efforts to increase the proportion of adults who are at a healthy weight, and reduce the levels of obesity and overweight among adults, children and adolescents. The Surgeon General's report "A Call to Action" lists the treatment and prevention of obesity as a top national priority.

Now, if this condition was linked to an infectious or bioterrorist agent, the public outcry would be deafening, and the action to control it swift. But it is not. Obesity and being overweight is often seen as an individual problem and a personal choice, and thus does not receive much attention. Most people do not choose to be overweight. Overweight and obesity result from daily lifestyle choices that gradually accumulate. Weight gain occurs slowly, often unnoticed. Today, many Americans struggle to control their weight, collectively spending billions of dollars each year on weight loss products and programs.

The good news is that, with healthy eating and regular physical activity, obesity is preventable and treatable. That is why I, along with Senator BINGAMAN, Senator DODD, and others, am reintroducing the "Improved Nutrition and Physical Activity, IMPACT, Act." I am pleased that Representatives MARY BONO and KAY GRANGER, along with other co-sponsors, introduced companion legislation in the House of Representatives earlier this year. This bill will help Americans make healthy decisions about nutrition and physical activity. It emphasizes youth education so that healthy habits can begin early. Finally, it funds demonstration projects to find innovative ways of improving eating and exercise habits.

There is no single solution to the growing epidemic of obesity. That is why the IMPACT Act takes a multifaceted approach. It implements evidence-based programs, where available, and includes rigorous evaluation of demonstration projects so we can learn what works best. This important legislation has a modest price tag, reflecting the appropriate role of the Federal Government. Most importantly, the IMPACT Act does not attempt to mandate what Americans eat or drink or to transfer to the Federal Government decisions that are best made at local levels.

Let me be clear that I am not against people making choices. I am all for choice, informed choice. What has happened, though, is that we as a society and as individuals have made choices about eating and activity, gradually and incrementally, without under-

standing or considering the consequences. Finally, and most importantly, this bill does not intend to and should not be considered to stigmatize those who struggle to control their weight or to demonize any sector of the country by blaming them for this epidemic. The IMPACT Act represents a bipartisan agreement that the problem of obesity is important, and takes an approach that is supported by a broad spectrum of interested parties. With the Federal Government providing assistance, all sectors of society will need to work together to help produce a healthier nation.

I believe we have crafted a good first response to the growing rates of obesity. A number of public health and industry experts support the passage of this important legislation. I ask unanimous consent that a list of the organizations supporting the legislation and the text of the bill be printed in the RECORD.

I want to thank Senators BINGAMAN and DODD for their work on this bill. I also want to thank Senator GREGG for his assistance in ensuring that this legislation can become law. Senator GREGG has worked tirelessly with my staff to ensure that we craft legislation that can be quickly passed by the Senate, and I appreciate his efforts. I look forward to having this bill become law this year.

There being no objection, the list and the bill were ordered to be printed in the RECORD, as follows:

GROUPS SUPPORTING THE IMPACT ACT
The Advertising Council, Inc.;
Consortium for Citizens with Disabilities
Prevention Task Force;
Council on State and Territorial Epidemiologists;
Endocrine Society;
FamilyCook Productions: Bringing Families Together Through Fresh Food;
Grocery Manufacturers of America;
National Alliance for Nutrition and Activity;
National Recreation and Parks Association;
Research against Inactivity-related Disorders (RID);
Samuels & Associates: Public Health Research, Evaluation, and Policy Consultants;
Society for Nutrition Education;
Structure House;
University of North Carolina at Chapel Hill, School of Public Health; and
YMCA.

S. 1172

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Improved Nutrition and Physical Activity Act" or the "IMPACT Act".

SEC. 2. FINDINGS.

Congress makes the following findings:

- (1) An estimated 61 percent of adults and 13 percent of children and adolescents in the Nation are overweight or obese.
- (2) The prevalence of obesity and being overweight is increasing among all age groups. There are twice the number of overweight children and 3 times the number of overweight adolescents as there were 29 years ago.

DOCUMENT NO. 9

under the Uniformed Service Employment and Reemployment Rights Act, they have many responsibilities. Again, these responsibilities are mandated by Congress, but in many ways most of these businesses, almost all of them, are obligated through patriotism and a sense of resolve to the war in Iraq to take these people back, to care for them and, in many cases, give them their back pay. So I think it is altogether fitting that we this afternoon honor the businesses.

Mr. Speaker, I urge my colleagues to support this resolution.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. BASS). The question is on the motion offered by the gentleman from Florida (Mr. STEARNS) that the House suspend the rules and agree to the resolution, H. Res. 201.

The question was taken. The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. STEARNS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

SPORTS AGENT RESPONSIBILITY AND TRUST ACT

Mr. STEARNS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 361) to designate certain conduct by sports agents relating to the signing of contracts with student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission, as amended.

The Clerk read as follows:

H. R. 361

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Sports Agent Responsibility and Trust Act".

SEC. 2. DEFINITIONS.

As used in this Act, the following definitions apply:

(1) **AGENCY CONTRACT.**—The term "agency contract" means an oral or written agreement in which a student athlete authorizes a person to negotiate or solicit on behalf of the student athlete a professional sports contract or an endorsement contract.

(2) **ATHLETE AGENT.**—The term "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, and does not include a spouse, parent, sibling, grandparent, or guardian of such student athlete, any legal counsel for purposes other than that of representative agency, or an individual acting solely on behalf of a professional sports team or professional sports organization.

(3) **ATHLETIC DIRECTOR.**—The term "athletic director" means an individual responsible for administering the athletic program of an educational institution or, in the case that such

program is administered separately, the athletic program for male students or the athletic program for female students, as appropriate.

(4) **COMMISSION.**—The term "Commission" means the Federal Trade Commission.

(5) **ENDORSEMENT CONTRACT.**—The term "endorsement contract" means an agreement under which a student athlete is employed or receives consideration for the use by the other party of that individual's person, name, image, or likeness in the promotion of any product, service, or event.

(6) **INTERCOLLEGIATE SPORT.**—The term "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 college athletics.

(7) **PROFESSIONAL SPORTS CONTRACT.**—The term "professional sports 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.

(8) **STATE.**—The term "State" includes 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.

(9) **STUDENT ATHLETE.**—The term "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. An individual who is permanently ineligible to participate in a particular intercollegiate sport is not a student athlete for purposes of this sport.

SEC. 3. REGULATION OF UNFAIR AND DECEPTIVE ACTS AND PRACTICES IN CONNECTION WITH THE CONTACT BETWEEN AN ATHLETE AGENT AND A STUDENT ATHLETE.

(a) **CONDUCT PROHIBITED.**—It is unlawful for an athlete agent to—

(1) directly or indirectly recruit or solicit a student athlete to enter into an agency contract, by—

(A) giving any false or misleading information or making a false promise or representation; or

(B) providing anything of value to a student athlete or anyone associated with the student athlete before the student athlete enters into an agency contract, including any consideration in the form of a loan, or acting in the capacity of a guarantor or co-guarantor for any debt;

(2) enter into an agency contract with a student athlete without providing the student athlete with the disclosure document described in subsection (b); or

(3) predate or postdate an agency contract.

(b) **REQUIRED DISCLOSURE BY ATHLETE AGENTS TO STUDENT ATHLETES.**—

(1) **IN GENERAL.**—In conjunction with the entering into of an agency contract, an athlete agent shall provide to the student athlete, or, if the student athlete is under the age of 18, to such student athlete's parent or legal guardian, a disclosure document that meets the requirements of this subsection. Such disclosure document is separate from and in addition to any disclosure which may be required under State law.

(2) **SIGNATURE OF STUDENT ATHLETE.**—The disclosure document must be signed by the student athlete, or, if the student athlete is under the age of 18, by such student athlete's parent or legal guardian, prior to entering into the agency contract.

(3) **REQUIRED LANGUAGE.**—The disclosure document must contain, in close proximity to the signature of the student athlete, or, if the student athlete is under the age of 18, the signature of such student athlete's parent or legal guardian, a conspicuous notice in boldface type stating: "Warning to Student Athlete: If you agree orally or in writing to be represented by an agent now or in the future you may lose your

eligibility to compete as a student athlete in your sport. Within 72 hours after entering into this contract or before the next athletic event in which you are eligible to participate, whichever occurs first, both you and the agent by whom you are agreeing to be represented must notify the athletic director of the educational institution at which you are enrolled, or other individual responsible for athletic programs at such educational institution, that you have entered into an agency contract."

SEC. 4. ENFORCEMENT.

(a) **UNFAIR OR DECEPTIVE ACT OR PRACTICE.**—A violation of this Act shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(1)(B)).

(b) **ACTIONS BY THE COMMISSION.**—The Commission shall enforce this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act.

SEC. 5. ACTIONS BY STATES.

(a) **IN GENERAL.**—

(1) **CIVIL ACTIONS.**—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any athlete agent in a practice that violates section 3 of this Act, the State may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—

(A) enjoin that practice;

(B) enforce compliance with this Act; or

(C) obtain damage, restitution, or other compensation on behalf of residents of the State.

(2) **NOTICE.**—

(A) **IN GENERAL.**—Before filing an action under paragraph (1), the attorney general of the State involved shall provide to the Commission—

(1) written notice of that action; and

(2) a copy of the complaint for that action.

(B) **EXEMPTION.**—Subparagraph (A) shall not apply with respect to the filing of an action by an attorney general of a State under this subsection, if the attorney general determines that it is not feasible to provide the notice described in that subparagraph before filing of the action. In such case, the attorney general of a State shall provide notice and a copy of the complaint to the Commission at the same time as the attorney general files the action.

(c) **INTERVENTION.**—

(1) **IN GENERAL.**—On receiving notice under subsection (a)(2), the Commission shall have the right to intervene in the action that is the subject of the notice.

(2) **EFFECT OF INTERVENTION.**—If the Commission intervenes in an action under subsection (a), it shall have the right—

(A) to be heard with respect to any matter that arises in that action; and

(B) to file a petition for appeal.

(c) **CONSTRUCTION.**—For purposes of bringing any civil action under subsection (a), nothing in this title shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

(1) conduct investigations;

(2) administer oaths or affirmations; or

(3) compel the attendance of witnesses or the production of documentary and other evidence.

(d) **ACTIONS BY THE COMMISSION.**—In any case in which an action is instituted by or on behalf of the Commission for a violation of section 3, no State may, during the pendency of that action, institute an action under subsection (a) against any defendant named in the complaint in that action.

(e) **VENUE.**—Any action brought under subsection (a) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

(f) SERVICE OF PROCESS.—In an action brought under subsection (a), process may be served in any district in which the defendant—

- (1) is an inhabitant; or
(2) may be found.

SEC. 6. PROTECTION OF EDUCATIONAL INSTITUTION.

(a) NOTICE REQUIRED.—Within 72 hours after entering into an agency contract or before the next athletic event in which the student athlete may participate, whichever occurs first, the athlete agent and the student athlete shall each inform the athletic director of the educational institution at which the student athlete is enrolled, or other individual responsible for athletic programs at such educational institution, that the student athlete has entered into an agency contract, and the athlete agent shall provide the athletic director with notice in writing of such a contract.

(b) CIVIL REMEDY.—

(1) IN GENERAL.—An educational institution has a right of action against an athlete agent for damages caused by a violation of this Act.

(2) DAMAGES.—Damages of an educational institution may include and are limited to actual losses and expenses incurred because, as a result of the conduct of the athlete agent, the educational institution was injured by a violation of this Act 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 actions likely to be imposed by such an association or conference.

(3) COSTS AND ATTORNEYS FEES.—In an action taken under this section, the court may award to the prevailing party costs and reasonable attorneys fees.

(4) EFFECT ON OTHER RIGHTS, REMEDIES AND DEFENSES.—This section does not restrict the rights, remedies, or defenses of any person under law or equity.

SEC. 7. LIMITATION.

Nothing in this Act shall be construed to prohibit an individual from seeking any remedies available under existing Federal or State law or equity.

SEC. 8. SENSE OF CONGRESS.

It is the sense of Congress that States should enact the Uniform Athlete Agents Act of 2000 drafted by the National Conference of Commissioners on Uniform State Laws, to protect student athletes and the integrity of amateur sports from unscrupulous sports agents. In particular, it is the sense of Congress that States should enact the provisions relating to the registration of sports agents, the required form of contract, the right of the student athlete to cancel an agency contract, the disclosure requirements relating to record maintenance, reporting, renewal, notice, warning, and security, and the provisions for reciprocity among the States.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida (Mr. STEARNS) and the gentleman from Tennessee (Mr. GORDON) each will control 20 minutes.

The Chair recognizes the gentleman from Florida (Mr. STEARNS).

GENERAL LEAVE

Mr. STEARNS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 361, as amended.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. STEARNS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 361, the Sports Agent Trust and Responsibility Act.

Mr. Speaker, this legislation is sponsored by my friend and colleague on the Committee on Energy and Commerce, the gentleman from Tennessee (Mr. GORDON), for whom this has been a long-standing concern. Additionally, our colleague, the gentleman from Nebraska (Mr. OSBORNE), also has firsthand experience in dealing with the problem in this bill in his prior career and is a major cosponsor.

The Subcommittee on Commerce, Trade and Consumer Protection held hearings on this legislation last year and heard from many experts regarding the problems facing promising student athletes in this country. My colleagues and I on the Committee on Energy and Commerce agree there is a problem and that this bill, H.R. 361, is a responsible and necessary legislative solution. We passed the legislation out of our committee unanimously in the 107th Congress.

For my colleagues who may be unaware of the nature of the problem, let me briefly explain this afternoon. I am sure the gentleman from Tennessee (Mr. GORDON) and the gentleman from Nebraska (Mr. OSBORNE) will also amplify my comments on how destructive this behavior can be to the student athletes, their families, and to the schools.

I share their concern that student athletes are often targeted by unscrupulous agents who suffer little or no consequence for their continued deception. In today's multibillion dollar professional sports industry, collegiate athletes with even the slightest potential of becoming a highly paid professional athlete often find themselves in the cross hairs of sports agents. Because the odds of an athlete making it to the professional ranks is very, very low, the financial reward for those who do make it can be extraordinary, and the financial windfall to an agent representing the athlete is highly significant.

For an agent who may not be an established name in the business, success for this agent may be dependent upon either signing a superstar or playing the simple percentages and representing multiple promising athletes in hopes of at least one making it to the professional leagues.

Unfortunately, Mr. Speaker, the agents looking to make a quick buck are often the same ones who do not have the athlete's best interest in mind. While the reputable agents respect the athletes, and, of course, they follow the rules, the unscrupulous agents have been reported to take extreme measures to sign the athlete with little regard for the consequences to the athlete. Why do they do this? For those agents lacking any integrity, the financial payout can be very, very large, and there are few, if any, consequences to dissuade them.

While we do not currently have a Federal remedy to address these prob-

lems, many of our States do. They have recognized the problem and have varying State laws to address the behavior of these sports agents. Because the inconsistency of the State laws has prevented meaningful enforcement, the States recently approved a uniform State athlete agent act in the Year 2000. More than a dozen States have since enacted the law, and it is working its way through many other State legislatures.

As promising as this sounds, it is a long process that does not guarantee that all of the States will adopt it. While this may not sound significant to my colleagues, the law can only be completely effective if it is enforced uniformly in every State in this Nation.

The States deserve credit for addressing this problem. Yet, Mr. Speaker, the reality is that there is still a gaping hole that this legislation will finally fill. Not only does this legislation provide the Federal Trade Commission with the authority to enforce the act, but it also provides the States with the authority to bring civil action against violators in the Federal courts. Additionally, the legislation requires a new disclosure to the student athlete, and, finally, places a measure of responsibility on the agent himself so that there should be no misunderstanding regarding the signing of a contract.

Mr. Speaker, this legislation provides a Federal remedy to a problem that many of us did not know about, but it is no less deserving of a cure this afternoon. H.R. 361 provides a measured response. I urge my colleagues to support it.

Mr. Speaker, I reserve the balance of my time.

Mr. GORDON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I intend to make a few brief remarks in support of H.R. 361, the Sports Agent Responsibility and Trust Act, or SPARTA. The combination of a patchwork of weak State laws and the lure of big money has made student athletes an irresistible target for certain unscrupulous sports agents willing to break the rules concerning amateur athletics. Such agents use any means necessary to convince a student athlete who has even a remote chance of playing professional sports to drop out of school and go pro early, including deceptive information about their chances in the draft, secret payments to their friends and families, lavish gifts, and sometimes even blackmail.

This kind of illicit behavior can quickly cost student athletes their scholarships and eligibility to play college sports. The school may face substantial fines and other economic losses.

The only person not held accountable is the sports agent. Unfortunately, under the current patchwork of State sports agent laws, the agents face little or no consequences for damages they have caused.

H.R. 361 addresses this problem head on by providing baseline Federal remedies to protect student athletes and educational institutions, particularly in those States with no existing law regulating sports agent conduct.

Specifically, the bill would make a number of unethical recruiting tactics unfair and deceptive trade practices under the Federal Trade Act. This includes making false or misleading promises or representations, providing anything of value to the student athletes or anyone associated with the athlete in order to entice them into an agency contract, failing to tell the student signing the contract that it will end their college eligibility, and pre-dating or post-dating contracts.

The pressures on student athletes and colleges are tremendous. We have a responsibility to educate our student athletes and protect them from unscrupulous sports agents who try to trick or trap them into dropping out of school. This legislation will send a strong signal to the rotten apple agents that they will be held accountable for unethical recruiting practices. I urge all Members to support this bill.

Finally, Mr. Speaker, let me give my sincere thanks to the gentleman from the State and University of Nebraska (Mr. OSBORNE). The gentleman has brought a unique perspective to this bill and persuasiveness that has helped us get this passed.

Also I want to thank the subcommittee chairman from the Committee on Energy and Commerce, the gentleman from Florida (Mr. STEARNS), for expediting this procedure and helping us move through his committee, as well as the ranking member, the gentleman from New York (Mr. TOWNS).

I also want to thank the gentleman from Louisiana (Chairman TAUZIN) and the ranking member, the gentleman from Michigan (Mr. DINGELL), for their help. Certainly with joint jurisdiction with the Committee on the Judiciary, the gentleman from Wisconsin (Chairman SENSENBRENNER) should be thanked for his help; as well as the subcommittee chairman, the gentleman from Utah (Mr. CANNON); the ranking member, the gentleman from North Carolina (Mr. WATT); and the ranking member, the gentleman from Michigan (Mr. CONYERS).

Finally, let me thank a diligent member of my staff, Dana Lichtenberg, who has done an outstanding job with her tenaciousness in moving this bill forward, and also a friend of mine from home, Ken Shipp. Coach Shipp came by my office a few years ago on the Square in Murfreesboro and told me about this problem; and, like so many things, I get my best advice from home, and so I thank Coach Shipp for his advice.

Mr. Speaker, I reserve the balance of my time.

Mr. STEARNS. Mr. Speaker, I yield 4 minutes to the gentleman from Wisconsin (Mr. SENSENBRENNER), the distinguished chairman of the Committee on the Judiciary.

Mr. SENSENBRENNER. Mr. Speaker, I rise in support of H.R. 361. This legislation, which is known as the SPARTA Act, is important for the sports industry, which in recent years has become ever more just so that, an industry. The thrill of pure athletic accomplishment has been overwhelmed as a motivating incentive by the desire for economic gain. While understandable, we cannot allow this desire to lead to the abuse of individuals, the public and private universities and colleges, and the system itself.

We as Americans love sports. Who does not enjoy sitting back on a relaxing weekend watching their favorite college and professional sports teams performing? In Wisconsin, every Sunday during the fall we watch the Green Bay Packers with the intensity and caring of a mother bear watching her cubs. We have dedicated a month to an American tradition called March Madness and watch some of the most athletically gifted students in the Nation compete in the drama which can have only one victor at the day's end.

□ 1430

However, even with all this talent, only 1 percent of the NCAA athletes make it to the professional level, and then often only in a back-up role. For those who do make it to the big leagues, the rewards are great.

Athlete agents want to reap this reward, as well. As a result, some agents deploy questionable tactics in a generally unregulated field. They send runners to befriend these athletes and give them money and other enticements, and support the friends and family of the athlete with money and gifts.

This is done in consideration of an agreement for future representation, which is illegal by NCAA standards and causes the athlete to lose their collegiate eligibility. In many States, the penalty to the agent is nothing.

Mr. Speaker, the Uniform Athlete Agents Act, which addresses this situation, has been adopted by over 20 States. However, given the nature of intercollegiate sports, State boundaries are crossed constantly. Agents can forum-shop by waiting in a State that has not adopted the UAAA and wait for the visiting team to arrive before approaching college stars.

Because of this unique situation, this Federal solution is necessary. Geographic loopholes must be closed so that agents will comply with the modest guidelines set forth for recruitment by the NCAA.

Mr. Speaker, this bill deserves the full support of the House, and I urge its adoption.

Mr. GORDON. Mr. Speaker, I yield 2 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, let me first of all give much

applause to the gentleman from Tennessee (Mr. GORDON) for a very thoughtful, but very important legislative Initiative. I am very proud as a member of the Committee on the Judiciary to have had an opportunity to have had oversight and jurisdiction over this legislation. I am also grateful for the response of the gentleman from Florida (Chairman STEARNS) in bringing this legislation to the floor.

Let me speak from a personal perspective, I guess, because I have an 11th grader whose almost every waking moment deals with what is happening on the basketball court. I work very hard as a parent to ensure that his academics are safe and secure.

We realize that America loves sports, young people love sports, but particularly in rural and inner-city communities many of our young people find their way out of poverty by seeking opportunities in a sports arena. I remember being with a family just a few weeks ago who was praying that their young man would be able to get into a certain college, and they were prayerful that his future would be great in some sports arena.

So this bill, I say to the gentleman from Tennessee (Mr. GORDON), is extremely important because what it does is it provides an even playing field for the innocent youngster, the young person whose parents are hopeful that their lives will be different than the lives of their parents, struggling every day to work and provide resources for the family.

The unscrupulous will be charged and the Federal Government, which I believe should be the major problem-solver of this Nation, will be right in the midst. We will not blame and see the headlines of the young people who may have gotten a car or may have been somewhere where they should not have been, while the other guy, who continues to have his fabulous rings and fancy cars, the sports agent, of which I do not label all of them, goes without penalty.

Let me give a compliment to many sports agents that I know who work very hard to speak accurately to the families, and work with the young people. But I believe this legislation will set a litmus test to ensure that we balance these hopes and dreams and aspirations, these goals for these young people, and the right thing to do.

So I applaud this legislation and I rise enthusiastically to support it. I know it will make life better for those who are trying to make life better for themselves.

Mr. STEARNS. Mr. Speaker, I yield 5 minutes to the gentleman from Nebraska (Mr. OSBORNE), who has actually run premier athletic programs and has run multiple national college football championships at the University of Nebraska. If anyone knows about this problem of unscrupulous sports agents, the gentleman from Nebraska would know that.

Mr. OSBORNE. Mr. Speaker, I thank the chairman for yielding time to me, and I appreciate his help very much.

I would also like to thank the gentleman from Tennessee (Mr. GORDON) and his staff for all the work they have put in; the gentleman from Louisiana (Chairman TAUBIN) and the gentleman from Wisconsin (Chairman SENSENBRENNER) and their staffs; and also Lisa Knott from my staff. Many people have cooperated.

As has been mentioned, currently only 20 States have comprehensive laws regulating sports agents; 17 States have no laws at all. My State, Nebraska, is one of those. Thirteen States have a patchwork of laws governing sports agents.

Here is the problem. I will use primarily a football illustration, because that is what I understand the best. As of April, 2002, the National Football League Players Association reported 1,200 certified agents to represent NFL players. The problem is that of those 1,200, only 400 had clients, so we have 800 people who say they are agents and they have nobody to represent.

There are also several hundred other agents who are not even certified by the National Football League who also call themselves agents. So if they call themselves agents and do not have a client, they are pretty desperate. What these guys do is, they will go after undergraduates, and they will sometimes be very unscrupulous in doing so. There are some good agents, but many are not. So here are some of the things that happen.

They will offer an undergraduate athlete cars, clothes, cash, sometimes even drugs, to sign an agency contract. Of course, immediately this renders the student athlete ineligible.

They promise an athlete that he will be drafted higher. The National Football League tells them they will be drafted in the fourth round, and the agent says, that is a lot of baloney. I will get you a personal trainer. I will get you a nutritionist, we will go to California, we will work hard, you are going to get bigger, faster, stronger, you are going to be a first-round pick, and you are going to make \$6 million just to sign your name.

Of course, that is totally untrue. They cannot get a player drafted higher because of the agent's activities. So the player drops out of school at that point, and he gets a nutritionist, and nothing happens.

They use runners, as has been mentioned. These are usually former players. These are student athletes in the school. Sometimes they are simply students in the school. The player has no idea that he is dealing with somebody who represents an agent. So the runner takes him out to dinner and gets him obligated.

They sometimes threaten athletes with physical harm.

Lastly, they often tell a student athlete they will predate or postdate a contract so they will not jeopardize

their eligibility, which is absolutely untrue. The minute they verbally agree to a contract or sign it, no matter whether it is predated or postdated, they are ineligible. These are some of the problems.

With these problems in mind, the gentleman from Tennessee (Mr. GORDON) and I have introduced H.R. 361, which has been referred to previously as SPARTA. It makes it illegal for sports agents to entice student athletes with false or misleading information, promises, or representations.

SPARTA requires the agent to inform the undergraduate athlete and his school in writing that the player has signed an agency contract and is ineligible. What often happens is a school does not know that they have got a guy out there playing who is ineligible, that he has already signed a contract, so this forces the agent to let the school know in writing that he has a player under contract and that player is ineligible.

Under SPARTA, sports agents who engage in illegal recruiting will be fined up to \$11,000 per incident per day. The Committee on Energy and Commerce passed this legislation by voice vote. The Committee on the Judiciary passed SPARTA by voice vote. So this legislation is bipartisan and it is non-controversial.

I urge my colleagues to support this legislation. I do not know any college athletic director, coach, reputable athlete, or most reputable agents themselves who would oppose this legislation.

Again, I want to thank my colleague, the gentleman from Tennessee (Mr. GORDON), all those involved, and urge passage of this, what I think is a very important Federal backstop, very important legislation.

Mr. GORDON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, let me once again thank the gentleman from Nebraska (Mr. OSBORNE) for his efforts. To just elaborate a little on his comments, this legislation has been endorsed by virtually every organization that is affected in the country, by the American Football Coaching Association, the Black Coaches Association, the Knight Foundation Commission on Intercollegiate Athletics, the National Association of Basketball Coaches, the National Association of College Directors of Athletics, the NCAA, the Junior College Athletic Association, the Big 12, the Big East, the Pac-10, the Sunbelt Conference, and coaches and athletic departments all across the country.

Mr. Speaker, I reserve the balance of my time.

Mr. STEARNS. Mr. Speaker, I yield 4 minutes to the gentleman from Utah (Mr. CANNON).

Mr. CANNON. Mr. Speaker, I rise in support of H.R. 361.

This bill is important for all of the reasons that have already been discussed. An athletic agent is in a unique position in that while he stands to gain

from his relationship with the student athlete, that student athlete client shoulders much of the risk when rules are not followed.

H.R. 361 evens the responsibilities and will help to act as a deterrent for agents who would otherwise not play by the rules of the game.

H.R. 361 will prohibit an athlete agent from recruiting or soliciting a student athlete to enter into an agency contract through the use of false or misleading information, or by the provision of anything of value to the athlete or those associated with him.

In addition, the bill would require the contract between the agent and the student athlete to have a conspicuous notice in bold typeface stating that the agreement for agent representation may result in the termination of the student athlete's eligibility to compete in collegiate sports.

Violations of this act may be addressed by the Federal Trade Commission or the attorney general of the State of occurrence. The FTC may pursue an action as an unfair or deceptive act or practice. States are authorized to commence civil actions against the agent who is in violation of this act and seek remedies, including enjoining the practice, enforcing compliance, obtaining damages, restitution, or other compensation on behalf of the State's residents.

In addition, this bill allows for educational institutions to seek damages in the event that a university athletic director is not informed of a new contractual relationship within 72 hours, either of the signing or the first event that the athlete is eligible to participate in.

Failure to so instruct may allow the ineligible athlete to compete, thus causing exposure for the institution to be liable or penalized under sanctions, fines, forfeitures, or disqualifications. The bill allows the institution to file suit against the agent for his failure to disclose, and to seek compensation for those damages which the educational institution suffered.

At the subcommittee, with the support of the gentleman from Tennessee (Mr. GORDON) and the gentleman from Nebraska (Mr. OSBORNE), working with the minority and with the distinguished ranking subcommittee member, the gentleman from North Carolina (Mr. WATT), I offered an amendment in the nature of a substitute which made this bill better.

The amendment clarified several portions of the bill to make it clear what behavior will and will not be tolerated. The amendment clarified that the only representation to be prohibited is that of an agent, and should not otherwise prohibit or discourage an athlete from seeking legal representation.

Further, the amendment included a specific ban on the giving of loans or acting as guarantor or co-guarantor for anything of value to the athlete or those associated with those athletes. This subcommittee is currently a common way of skirting NCAA rules.

Finally, the amendment clarified that nothing in this bill was meant to prohibit an individual from seeking Federal, State, or equity remedies under existing law, thus strengthening the student athlete's right to pursue a claim under existing contractual law.

Mr. Speaker, I join with my colleagues in urging the House to give its full support to the adoption of H.R. 361.

Mr. GORDON. Mr. Speaker, I yield myself the balance of my time.

Finally, Mr. Speaker, let me just say that this bill does not penalize the many legitimate sports agents. This bill does not stop any athlete from, with full information, going pro. Also, this bill does not set up a national sports police.

What it does is it deputizes the various States' attorneys general to follow up on the deceptive acts, and deal with these incidents or those problems on a local basis.

Once again, my thanks to all the Members that have made this bill possible to come to the floor and possibly pass today.

Mr. Speaker, I yield back the balance of my time.

Mr. STEARNS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, just in conclusion, maybe just a quick history on this bill.

The gentleman from Tennessee (Mr. GORDON) dropped the bill in the 107th Congress. We had a hearing out of the subcommittee that I chair, the Subcommittee on Commerce, Trade, and Consumer Protection. We had the NCAA and we had lots of witnesses. Everybody endorsed this bill.

I think for those who are worried that this is a Federal mandate, it is basically a bill to give a little bit more support to the States, particularly those States, perhaps in Nebraska, where they do not have any law, and give those State attorneys general the opportunity to prosecute those unscrupulous sports agents.

I think the gentleman from Tennessee (Mr. GORDON) is to be commended for his hard work on this over a long period of time, and for pushing it forward.

Also, I want to thank the gentleman from Louisiana (Mr. TAUZIN) for allowing a hearing on this. Eventually we are here this afternoon. I wish we could have passed this in the 107th Congress, but we are here in the 108th Congress, and hopefully we will get this bill passed.

Again, I commend all those who have been involved.

Mr. DINGELL. Mr. Speaker, I am a proud cosponsor of H.R. 361, the "Sports Agent Responsibility and Trust Act" (SPARTA). This legislation will hold unscrupulous sports agents responsible for their actions by authorizing the Federal Trade Commission and State attorneys general to enforce common sense protections for amateur athletes. I commend the chief sponsor of this bill, the gentleman from Tennessee, for his hard work on this bill.

This legislation empowers students with the ability to decide when and where they become

professionals and protects them from the underhanded tactics that have become all too common in this field. Under this legislation, student athletes can no longer be tricked into signing contracts through the deception or bribery of a sports agent. And agents must clearly disclose to students that they will no longer be amateurs if they sign an agency contract, before they sign the contract.

SPARTA enjoys wide support in the academic community and has been endorsed by the NCAA and over 30 colleges and universities, including the University of Michigan. I urge my colleagues to support this legislation and send a strong message to the unprincipled sports agents who prey on our youth.

Mr. STEARNS. Mr. Speaker, I yield back the balance of my time.

□ 1445

The SPEAKER pro tempore (Mr. BASS). The question is on the motion offered by the gentleman from Florida (Mr. STEARNS) that the House suspend the rules and pass the bill, H.R. 361, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

ARMED FORCES NATURALIZATION ACT OF 2003

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1954) to revise the provisions of the Immigration and Nationality Act relating to naturalization through service in the Armed Forces, and for other purposes, as amended.

The Clerk read as follows:

H.R. 1954

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Armed Forces Naturalization Act of 2003".

SEC. 2. NATURALIZATION THROUGH SERVICE IN ARMED FORCES.

(a) REDUCTION OF PERIOD FOR REQUIRED SERVICE.—

(1) IN GENERAL.—Section 328(a) of the Immigration and Nationality Act (8 U.S.C. 1439(a)) is amended by striking "three years," and inserting "one year."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to applications for naturalization filed or pending on or after the date of the enactment of this Act.

(b) PROHIBITION ON IMPOSITION OF FEES RELATING TO NATURALIZATION.—

(1) IN GENERAL.—Title III of the Immigration and Nationality Act (8 U.S.C. 1401 et seq.) is amended—

(A) in section 328(b)—

(i) in paragraph (3)—

(I) by striking "honorable. The" and inserting "honorable (the)"; and

(II) by striking "discharge." and inserting "discharge); and"; and

(ii) by adding at the end the following:

"(4) notwithstanding any other provision of law, no fee shall be charged or collected from the person for filing the application, or for the issuance of a certificate of naturalization upon being granted citizenship,

and no clerk of any State court shall charge or collect any fee for such services unless the laws of the State require such charge to be made, in which case nothing more than the portion of the fee required to be paid to the State shall be charged or collected."; and

(B) in section 328(b)—

(i) in paragraph (2), by striking "and" at the end;

(ii) in paragraph (3), by striking the period at the end and inserting "; and"; and

(iii) by adding at the end the following:

"(4) notwithstanding any other provision of law, no fee shall be charged or collected from the person for filing the application, or for the issuance of a certificate of naturalization upon being granted citizenship, and no clerk of any State court shall charge or collect any fee for such services unless the laws of the State require such charge to be made, in which case nothing more than the portion of the fee required to be paid to the State shall be charged or collected.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply with respect to applications for naturalization filed, and certificates of naturalization issued, on or after the date of the enactment of this Act. Such amendments shall not be construed to require the refund or return of any fee collected before such date.

(c) REVOCATION OF CITIZENSHIP FOR SEPARATION FROM MILITARY SERVICE UNDER OTHER THAN HONORABLE CONDITIONS.—

(1) IN GENERAL.—Title III of the Immigration and Nationality Act (8 U.S.C. 1401 et seq.) is amended—

(A) by adding at the end of section 328 the following:

"(f) Citizenship granted pursuant to this section may be revoked in accordance with section 340 if the person is separated from the Armed Forces under other than honorable conditions before the person has served honorably for a period or periods aggregating five years. Such ground for revocation shall be in addition to any other provided by law, including the grounds described in section 340. The fact that the naturalized person was separated from the service under other than honorable conditions shall be proved by a duly authenticated certification from the executive department under which the person was serving at the time of separation. Any period or periods of service shall be proved by duly authenticated copies of the records of the executive departments having custody of the records of such service.";

(B) by amending section 329(c) to read as follows:

"(c) Citizenship granted pursuant to this section may be revoked in accordance with section 340 if the person is separated from the Armed Forces under other than honorable conditions before the person has served honorably for a period or periods aggregating five years. Such ground for revocation shall be in addition to any other provided by law, including the grounds described in section 340. The fact that the naturalized person was separated from the service under other than honorable conditions shall be proved by a duly authenticated certification from the executive department under which the person was serving at the time of separation. Any period or periods of service shall be proved by duly authenticated copies of the records of the executive departments having custody of the records of such service.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to citizenship granted on or after the date of the enactment of this Act.

(d) NATURALIZATION PROCEEDINGS OVERSEAS FOR MEMBERS OF ARMED FORCES.—Notwithstanding any other provision of law, the Secretary of Homeland Security, the Secretary of State, and the Secretary of Defense

DOCUMENT NO. 10

consideration of S. 1368 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1368) to authorize the President to award a gold medal on behalf of the Congress to Reverend Doctor Martin Luther King, Jr. (posthumously) and his widow Coretta Scott King in recognition of their contributions to the Nation on behalf of the civil rights movement.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. I ask unanimous consent that my name be added as a cosponsor to this bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FRIST. I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 1368) was read the third time and passed, as follows:

S. 1368

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

Congress finds that—

(1) Reverend Doctor Martin Luther King, Jr. and his widow Coretta Scott King, as the first family of the civil rights movement, have distinguished records of public service to the American people and the international community;

(2) Dr. King preached a doctrine of non-violent civil disobedience to combat segregation, discrimination, and racial injustice;

(3) Dr. King led the Montgomery bus boycott for 381 days to protest the arrest of Mrs. Rosa Parks and the segregation of the bus system of Montgomery, Alabama;

(4) In 1963, Dr. King led the march on Washington, D.C., that was followed by his famous address, the "I Have a Dream" speech;

(5) through his work and reliance on non-violent protest, Dr. King was instrumental in the passage of the Civil Rights Act of 1964, and the Voting Rights Act of 1965;

(6) despite efforts to derail his mission, Dr. King acted on his dream of America and succeeded in making the United States a better place;

(7) Dr. King was assassinated for his beliefs on April 4, 1968, in Memphis, Tennessee;

(8) Mrs. King stepped into the civil rights movement in 1955 during the Montgomery bus boycott, and played an important role as a leading participant in the American civil rights movement;

(9) while raising 4 children, Mrs. King devoted herself to working alongside her husband for nonviolent social change and full civil rights for African Americans;

(10) with a strong educational background in music, Mrs. King established and performed several Freedom Concerts, which were well received, and which combined prose and poetry narration with musical selections to increase awareness and understanding of the Southern Christian Leadership Conference (of which Dr. King served as the first president);

(11) Mrs. King demonstrated composure in deep sorrow, as she led the Nation in mourn-

ing her husband after his brutal assassination;

(12) after the assassination, Mrs. King devoted all of her time and energy to developing and building the Atlanta-based Martin Luther King Jr. Center for Nonviolent Social Change (hereafter referred to as the "Center") as an enduring memorial to her husband's life and his dream of nonviolent social change and full civil rights for all Americans;

(13) under Mrs. King's guidance and direction, the Center has flourished;

(14) the Center was the first institution built in honor of an African American leader;

(15) the Center provides local, national, and international programs that have trained tens of thousands of people in Dr. King's philosophy and methods, and claims the largest archive of the civil rights movement; and

(16) Mrs. King led the massive campaign to establish Dr. King's birthday as a national holiday, and the holiday is now celebrated in more than 100 countries.

SEC. 2. CONGRESSIONAL GOLD MEDAL.

(a) PRESENTATION AUTHORIZED.—The President is authorized to present, on behalf of the Congress, a gold medal of appropriate design to Reverend Doctor Martin Luther King, Jr. (posthumously) and his widow Coretta Scott King, in recognition of their service to the Nation.

(b) DESIGN AND STRIKING.—For the purpose of the presentations referred to in subsection (a), the Secretary of the Treasury shall strike a gold medal with suitable emblems, devices, and inscriptions, to be determined by the Secretary.

SEC. 3. DUPLICATE MEDALS.

The Secretary of the Treasury shall strike and sell duplicates in bronze of the gold medal struck pursuant to section 2, under such regulations as the Secretary may prescribe, at a price sufficient to cover the costs of the duplicate medals and the gold medal including labor, materials, dies, use of machinery, and overhead expenses).

SEC. 4. NATIONAL MEDALS.

The medals struck under this Act are national medals for purposes of chapter 51 of title 31, United States Code.

SEC. 5. FUNDING AND PROCEEDS OF SALE.

(a) AUTHORIZATION.—There is authorized to be charged against the United States Mint Public Enterprise Fund an amount not to exceed \$30,000 to pay for the cost of the medals authorized by this Act.

(b) PROCEEDS OF SALE.—Amounts received from the sale of duplicate bronze medals under section 3 shall be deposited in the United States Mint Public Enterprise Fund.

SPORTS AGENT RESPONSIBILITY AND TRUST ACT

Mr. FRIST. I ask unanimous consent that the Commerce Committee be discharged from further consideration of H.R. 361 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 361) to designate certain conduct by sports agents relating to the signing of contracts with student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission.

There being no objection, the Senate proceeded to consider the bill.

Mr. MCCAIN. Mr. President, I am pleased that the Senate has agreed by

unanimous consent to pass H.R. 361, the Sports Agent Responsibility and Trust Act, SPARTA. The bill would help to protect amateur athletes from exploitation by sports agents. I commend Congressman Tom Osborne for his tireless work on this legislation and his ongoing commitment to ensuring that amateur athletes are treated with fairness and dignity.

This legislation is needed because State and Federal penalties for agents who engage in dishonest practices to lure athletes to sign contracts are seen by many groups as weak. For example, misconduct such as secret payments to amateur athletes, undisclosed payments to family or friends of athletes, unrealistic promises, pressure placed on the athletes, and even blackmail often go unpunished despite the severe damage that their practices cause to our country's amateur athletes.

Under SPARTA, sports agents would be prohibited from providing false or misleading information, making false promises, or providing anything of value to amateur athletes or their families. Each violation of SPARTA would be deemed an unfair or deceptive act or practice under the Federal Trade Commission Act, FTCA. SPARTA would authorize civil actions by the Federal Trade Commission, State attorneys general, and educational institutions against violators.

In addition, SPARTA would serve as a Federal backstop for an ongoing effort by the National Collegiate Athletic Association, NCAA, college coaches, university presidents, and athletic directors to promote at the State-level legislation developed by the National Conference of Commissioners on Uniform State Laws to regulate the business practices of sports agents. The legislation, titled the Uniform Athlete's Agent Act, UAAA, would require that sports agents be registered with the States in which they operate, and provide uniform State laws addressing their conduct and practices. To date, the legislatures of 29 States and two territories have passed the UAAA, but no similar Federal standard exists.

We must protect our youth from the predatory practices of those who do not share their best interests. This bill represents a positive step toward protecting amateur athletes and I thank my colleagues for their support in its passage.

Mr. FRIST. I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 361) was read the third time and passed.

ORDERS FOR FRIDAY, SEPTEMBER 10, 2004

Mr. FRIST. I ask unanimous consent that when the Senate completes its

DOCUMENT NO. 11

108TH CONGRESS
1ST SESSION

H. R. 361

To designate certain conduct by sports agents relating to the signing of contracts with student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 27, 2003

Mr. GORDON (for himself, Mr. OSBORNE, Mr. DINGELL, Mr. BROWN of Ohio, Mr. LUCAS of Kentucky, Mr. SERRANO, Ms. NORTON, Mr. SIMMONS, Mr. DUNCAN, Mr. HAYES, Mr. WAMP, Mr. TOWNS, Mr. WILSON of South Carolina, Mr. MATHESON, Mr. ENGEL, Mr. RAMSTAD, Mr. RUSH, Ms. MCCARTHY of Missouri, Mr. LEACH, Mr. SHIMKUS, Mr. DEUTSCH, Mr. STEARNS, Mr. DOYLE, Mr. BURR, Mrs. CAPPES, Mr. PICKERING, and Mr. UPTON) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To designate certain conduct by sports agents relating to the signing of contracts with student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Sports Agent Respon-
5 sibility and Trust Act”.

1 **SEC. 2. DEFINITIONS.**

2 As used in this Act, the following definitions apply:

3 (1) **AGENCY CONTRACT.**—The term “agency
4 contract” means an oral or written agreement in
5 which a student athlete authorizes a person to nego-
6 tiate or solicit on behalf of the student athlete a pro-
7 fessional sports contract or an endorsement contract.

8 (2) **ATHLETE AGENT.**—The term “athlete
9 agent” means an individual who enters into an agen-
10 cy contract with a student athlete, or directly or in-
11 directly recruits or solicits a student athlete to enter
12 into an agency contract, and does not include a
13 spouse, parent, sibling, grandparent, or guardian of
14 such student athlete, or an individual acting solely
15 on behalf of a professional sports team or profes-
16 sional sports organization.

17 (3) **ATHLETIC DIRECTOR.**—The term “athletic
18 director” means an individual responsible for admin-
19 istering the athletic program of an educational insti-
20 tution or, in the case that such program is adminis-
21 tered separately, the athletic program for male stu-
22 dents or the athletic program for female students, as
23 appropriate.

24 (4) **COMMISSION.**—The term “Commission”
25 means the Federal Trade Commission.

1 (5) ENDORSEMENT CONTRACT.—The term “en-
2 dorsement contract” means an agreement under
3 which a student athlete is employed or receives con-
4 sideration for the use by the other party of that in-
5 dividual’s person, name, image, or likeness in the
6 promotion of any product, service, or event.

7 (6) INTERCOLLEGIATE SPORT.—The term
8 “intercollegiate sport” means a sport played at the
9 collegiate level for which eligibility requirements for
10 participation by a student athlete are established by
11 a national association for the promotion or regula-
12 tion of college athletics.

13 (7) PROFESSIONAL SPORTS CONTRACT.—The
14 term “professional sports contract” means an agree-
15 ment under which an individual is employed, or
16 agrees to render services, as a player on a profes-
17 sional sports team, with a professional sports organi-
18 zation, or as a professional athlete.

19 (8) STATE.—The term “State” includes a State
20 of the United States, the District of Columbia, Puer-
21 to Rico, the United States Virgin Islands, or any
22 territory or insular possession subject to the jurisdic-
23 tion of the United States.

24 (9) STUDENT ATHLETE.—The term “student
25 athlete” means an individual who engages in, is cli-

1 gible to engage in, or may be eligible in the future
2 to engage in, any intercollegiate sport. An individual
3 who is permanently ineligible to participate in a par-
4 ticular intercollegiate sport is not a student athlete
5 for purposes of that sport.

6 **SEC. 3. REGULATION OF UNFAIR AND DECEPTIVE ACTS**
7 **AND PRACTICES IN CONNECTION WITH THE**
8 **CONTACT BETWEEN AN ATHLETE AGENT AND**
9 **A STUDENT ATHLETE.**

10 (a) **CONDUCT PROHIBITED.**—It is unlawful for an
11 athlete agent to—

12 (1) directly or indirectly recruit or solicit a stu-
13 dent athlete to enter into an agency contract, by—

14 (A) giving any false or misleading informa-
15 tion or making a false promise or representa-
16 tion; or

17 (B) providing anything of value to a stu-
18 dent athlete or anyone associated with the stu-
19 dent athlete before the student athlete enters
20 into an agency contract;

21 (2) enter into an agency contract with a stu-
22 dent athlete without providing the student athlete
23 with the disclosure document described in subsection
24 (b); or

25 (3) predate or postdate an agency contract.

1 (b) REQUIRED DISCLOSURE BY ATHLETE AGENTS
2 TO STUDENT ATHLETES.—

3 (1) IN GENERAL.—In conjunction with the en-
4 tering into of an agency contract, an athlete agent
5 shall provide to the student athlete, or, if the stu-
6 dent athlete is under the age of 18, to such student
7 athlete’s parent or legal guardian, a disclosure docu-
8 ment that meets the requirements of this subsection.
9 Such disclosure document is separate from and in
10 addition to any disclosure which may be required
11 under State law.

12 (2) SIGNATURE OF STUDENT ATHLETE.—The
13 disclosure document must be signed by the student
14 athlete, or, if the student athlete is under the age of
15 18, by such student athlete’s parent or legal guard-
16 ian, prior to entering into the agency contract.

17 (3) REQUIRED LANGUAGE.—The disclosure docu-
18 ment must contain, in close proximity to the signa-
19 ture of the student athlete, or, if the student athlete
20 is under the age of 18, the signature of such student
21 athlete’s parent or legal guardian, a conspicuous no-
22 tice in boldface type stating: “Warning to Student
23 Athlete: If you agree orally or in writing to be rep-
24 resented by an agent now or in the future you may
25 lose your eligibility to compete as a student athlete

1 in your sport. Within 72 hours after entering into
2 this contract or before the next athletic event in
3 which you are eligible to participate, whichever oc-
4 curs first, both you and the agent by whom you are
5 agreeing to be represented must notify the athletic
6 director of the educational institution at which you
7 are enrolled, or other individual responsible for ath-
8 letic programs at such educational institution, that
9 you have entered into an agency contract.”.

10 **SEC. 4. ENFORCEMENT.**

11 (a) UNFAIR OR DECEPTIVE ACT OR PRACTICE.—A
12 violation of this Act shall be treated as a violation of a
13 rule defining an unfair or deceptive act or practice pre-
14 scribed under section 18(a)(1)(B) of the Federal Trade
15 Commission Act (15 U.S.C. 57a(a)(1)(B)).

16 (b) ACTIONS BY THE COMMISSION.—The Commis-
17 sion shall enforce this Act in the same manner, by the
18 same means, and with the same jurisdiction, powers, and
19 duties as though all applicable terms and provisions of the
20 Federal Trade Commission Act (15 U.S.C. 41 et seq.)
21 were incorporated into and made a part of this Act.

22 **SEC. 5. ACTIONS BY STATES.**

23 (a) IN GENERAL.—

24 (1) CIVIL ACTIONS.—In any case in which the
25 attorney general of a State has reason to believe

1 that an interest of the residents of that State has
2 been or is threatened or adversely affected by the
3 engagement of any athlete agent in a practice that
4 violates section 3 of this Act, the State may bring
5 a civil action on behalf of the residents of the State
6 in a district court of the United States of appro-
7 priate jurisdiction to—

8 (A) enjoin that practice;

9 (B) enforce compliance with this Act;

10 (C) obtain damage, restitution, or other
11 compensation on behalf of residents of the
12 State; or

13 (D) obtain such other relief as the court
14 may consider to be appropriate.

15 (2) NOTICE.—

16 (A) IN GENERAL.—Before filing an action
17 under paragraph (1), the attorney general of
18 the State involved shall provide to the Commis-
19 sion—

20 (i) written notice of that action; and

21 (ii) a copy of the complaint for that
22 action.

23 (B) EXEMPTION.—Subparagraph (A) shall
24 not apply with respect to the filing of an action
25 by an attorney general of a State under this

1 subsection, if the attorney general determines
2 that it is not feasible to provide the notice de-
3 scribed in that subparagraph before filing of the
4 action. In such case, the attorney general of a
5 State shall provide notice and a copy of the
6 complaint to the Commission at the same time
7 as the attorney general files the action.

8 (b) INTERVENTION.—

9 (1) IN GENERAL.—On receiving notice under
10 subsection (a)(2), the Commission shall have the
11 right to intervene in the action that is the subject
12 of the notice.

13 (2) EFFECT OF INTERVENTION.—If the Com-
14 mission intervenes in an action under subsection (a),
15 it shall have the right—

16 (A) to be heard with respect to any matter
17 that arises in that action; and

18 (B) to file a petition for appeal.

19 (c) CONSTRUCTION.—For purposes of bringing any
20 civil action under subsection (a), nothing in this title shall
21 be construed to prevent an attorney general of a State
22 from exercising the powers conferred on the attorney gen-
23 eral by the laws of that State to—

24 (1) conduct investigations;

25 (2) administer oaths or affirmations; or

1 (3) compel the attendance of witnesses or the
2 production of documentary and other evidence.

3 (d) ACTIONS BY THE COMMISSION.—In any case in
4 which an action is instituted by or on behalf of the Com-
5 mission for a violation of section 3, no State may, during
6 the pendency of that action, institute an action under sub-
7 section (a) against any defendant named in the complaint
8 in that action—

9 (e) VENUE.—Any action brought under subsection
10 (a) may be brought in the district court of the United
11 States that meets applicable requirements relating to
12 venue under section 1391 of title 28, United States Code.

13 (f) SERVICE OF PROCESS.—In an action brought
14 under subsection (a), process may be served in any district
15 in which the defendant—

16 (1) is an inhabitant; or

17 (2) may be found.

18 **SEC. 6. PROTECTION OF EDUCATIONAL INSTITUTION.**

19 (a) NOTICE REQUIRED.—Within 72 hours after en-
20 tering into an agency contract or before the next athletic
21 event in which the student athlete may participate, which-
22 ever occurs first, the athlete agent and the student athlete
23 shall each inform the athletic director of the educational
24 institution at which the student athlete is enrolled, or
25 other individual responsible for athletic programs at such

1 educational institution, that the student athlete has en-
2 tered into an agency contract, and the athlete agent shall
3 provide the athletic director with notice in writing of such
4 a contract.

5 (b) CIVIL REMEDY.—

6 (1) IN GENERAL.—An educational institution
7 has a right of action against an athlete agent for
8 damages caused by a violation of this Act.

9 (2) DAMAGES.—Damages of an educational in-
10 stitution may include losses and expenses incurred
11 because, as a result of the conduct of the athlete
12 agent, the educational institution was injured by a
13 violation of this Act or was penalized, disqualified,
14 or suspended from participation in athletics by a na-
15 tional association for the promotion and regulation
16 of athletics, by an athletic conference, or by reason-
17 able self-imposed disciplinary action taken to miti-
18 gate actions likely to be imposed by such an associa-
19 tion or conference.

20 (3) COSTS AND ATTORNEYS FEES.—In an ac-
21 tion taken under this section, the court may award
22 to the prevailing party costs and reasonable attor-
23 neys fees.

24 (4) EFFECT ON OTHER RIGHTS, REMEDIES AND
25 DEFENSES.—This section does not restrict the

1 rights, remedies, or defenses of any person under
2 law or equity.

3 **SEC. 7. SENSE OF CONGRESS.**

4 It is the sense of Congress that States should enact
5 the Uniform Athlete Agents Act of 2000 drafted by the
6 National Conference of Commissioners on Uniform State
7 Laws, to protect student athletes and the integrity of ama-
8 teur sports from unscrupulous sports agents. In par-
9 ticular, it is the sense of Congress that States should enact
10 the provisions relating to the registration of sports agents,
11 the required form of contract, the right of the student ath-
12 lete to cancel an agency contract, the disclosure require-
13 ments relating to record maintenance, reporting, renewal,
14 notice, warning, and security, and the provisions for reci-
15 procity among the States.

○

DOCUMENT NO. 12

Union Calendar No. 66

108TH CONGRESS
1ST SESSION

H. R. 361

[Report No. 108-24, Parts I and II]

A BILL

To designate certain conduct by sports agents relating to the signing of contracts with student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission.

JUNE 2, 2003

Reported from the Committee on the Judiciary with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

Union Calendar No. 66

108TH CONGRESS
1ST SESSION

H. R. 361

[Report No. 108-24, Parts I and II]

To designate certain conduct by sports agents relating to the signing of contracts with student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 27, 2003

Mr. GORDON (for himself, Mr. OSBORNE, Mr. DINGELL, Mr. BROWN of Ohio, Mr. LUCAS of Kentucky, Mr. SERRANO, Ms. NORTON, Mr. SIMMONS, Mr. DUNCAN, Mr. HAYES, Mr. WAMP, Mr. TOWNS, Mr. WILSON of South Carolina, Mr. MATHESON, Mr. ENGEL, Mr. RAMSTAD, Mr. RUSH, Ms. MCCARTHY of Missouri, Mr. LEACH, Mr. SHIMKUS, Mr. DEUTSCH, Mr. STEARNS, Mr. DOYLE, Mr. BURR, Mrs. CAPPS, Mr. PICKERING, and Mr. UPTON) introduced the following bill; which was referred to the Committee on Energy and Commerce

MARCH 5, 2003

Reported and referred to the Committee on the Judiciary for a period ending not later than June 1, 2003, for consideration of such provisions of the bill as fall within the jurisdiction of that committee pursuant to clause 1(k), rule X

MAY 20, 2003

Referral to the Committee on the Judiciary extended for a period ending not later than June 2, 2003

JUNE 2, 2003

Additional sponsors: Mr. TERRY, Mr. BEREUTER, Mr. WOLF, Mr. BOUCHER, Mr. DEMINT, Mr. BOSWELL, Ms. CARSON of Indiana, Mr. ETHERIDGE, Mr. HEFLEY, Mr. MILLER of Florida, Mr. BAIRD, Mr. SOUDER, Mr. UDALL of Colorado, Ms. SOLIS, Mr. GRIJALVA, Mr. PETERSON of Minnesota, Mr. STENHOLM, Mr. JOHN, Mr. FORD, Mr. ROYCE, Mr. TANNER, Mr. DAVIS of Florida, Mr. KIND, Mr. HAYWORTH, Mr. BACIUS, Mr. KELLER, Mr. PLATTS, Mrs. BIGGERT, Mr. DAVIS of Tennessee, Mrs.

KELLY, Mr. KIRK, Ms. HART, Mr. PENCE, Mr. FLETCHER, Mr. MEEHAN, Mr. BERMAN, Mr. WATT, Mr. LIPINSKI, Mr. CHOCOLA, Mrs. EMERSON, Mr. GREEN of Wisconsin, Mr. LAHOOD, Mr. MORAN of Kansas, Mr. SHUSTER, Mr. TIAHRT, Mr. WALSH, Ms. WATSON, Ms. LEE, Mr. BARRETT of South Carolina, and Mr. CONYERS

JUNE 2, 2003

Reported from the Committee on the Judiciary with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To designate certain conduct by sports agents relating to the signing of contracts with student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “~~Sports Agent Respon-~~
 5 ~~sibility and Trust Act~~”.

6 **SEC. 2. DEFINITIONS.**

7 As used in this Act, the following definitions apply:

8 (1) ~~AGENCY CONTRACT.~~—The term “agency
 9 contract” means an oral or written agreement in
 10 which a student athlete authorizes a person to nego-
 11 tiate or solicit on behalf of the student athlete a pro-
 12 fessional sports contract or an endorsement contract.

1 (2) ATHLETE AGENT.—The term “athlete
2 agent” means an individual who enters into an agen-
3 cy contract with a student athlete, or directly or in-
4 directly recruits or solicits a student athlete to enter
5 into an agency contract, and does not include a
6 spouse, parent, sibling, grandparent, or guardian of
7 such student athlete, or an individual acting solely
8 on behalf of a professional sports team or profes-
9 sional sports organization.

10 (3) ATHLETIC DIRECTOR.—The term “athletic
11 director” means an individual responsible for admin-
12 istering the athletic program of an educational insti-
13 tution or, in the case that such program is adminis-
14 tered separately, the athletic program for male stu-
15 dents or the athletic program for female students, as
16 appropriate.

17 (4) COMMISSION.—The term “Commission”
18 means the Federal Trade Commission.

19 (5) ENDORSEMENT CONTRACT.—The term “en-
20 dorsement contract” means an agreement under
21 which a student athlete is employed or receives con-
22 sideration for the use by the other party of that in-
23 dividual’s person, name, image, or likeness in the
24 promotion of any product, service, or event.

1 (6) INTERCOLLEGIATE SPORT.—The term
2 “intercollegiate sport” means a sport played at the
3 collegiate level for which eligibility requirements for
4 participation by a student athlete are established by
5 a national association for the promotion or regula-
6 tion of college athletics.

7 (7) PROFESSIONAL SPORTS CONTRACT.—The
8 term “professional sports contract” means an agree-
9 ment under which an individual is employed, or
10 agrees to render services, as a player on a profes-
11 sional sports team, with a professional sports organi-
12 zation, or as a professional athlete.

13 (8) STATE.—The term “State” includes a State
14 of the United States, the District of Columbia, Puer-
15 to Rico, the United States Virgin Islands, or any
16 territory or insular possession subject to the jurisdic-
17 tion of the United States.

18 (9) STUDENT ATHLETE.—The term “student
19 athlete” means an individual who engages in, is eli-
20 gible to engage in, or may be eligible in the future
21 to engage in, any intercollegiate sport. An individual
22 who is permanently ineligible to participate in a par-
23 ticular intercollegiate sport is not a student athlete
24 for purposes of that sport.

1 **SEC. 3. REGULATION OF UNFAIR AND DECEPTIVE ACTS**
2 **AND PRACTICES IN CONNECTION WITH THE**
3 **CONTACT BETWEEN AN ATHLETE AGENT AND**
4 **A STUDENT ATHLETE.**

5 (a) **CONDUCT PROHIBITED.**—It is unlawful for an
6 athlete agent to—

7 (1) directly or indirectly recruit or solicit a stu-
8 dent athlete to enter into an agency contract, by—

9 (A) giving any false or misleading informa-
10 tion or making a false promise or representa-
11 tion; or

12 (B) providing anything of value to a stu-
13 dent athlete or anyone associated with the stu-
14 dent athlete before the student athlete enters
15 into an agency contract;

16 (2) enter into an agency contract with a stu-
17 dent athlete without providing the student athlete
18 with the disclosure document described in subsection
19 (b); or

20 (3) predate or postdate an agency contract.

21 (b) **REQUIRED DISCLOSURE BY ATHLETE AGENTS**
22 **TO STUDENT ATHLETES.**—

23 (1) **IN GENERAL.**—In conjunction with the en-
24 tering into of an agency contract, an athlete agent
25 shall provide to the student athlete, or, if the stu-
26 dent athlete is under the age of 18, to such student

1 athlete's parent or legal guardian, a disclosure docu-
2 ment that meets the requirements of this subsection.
3 Such disclosure document is separate from and in
4 addition to any disclosure which may be required
5 under State law.

6 (2) SIGNATURE OF STUDENT ATHLETE.—The
7 disclosure document must be signed by the student
8 athlete, or, if the student athlete is under the age of
9 18, by such student athlete's parent or legal guard-
10 ian, prior to entering into the agency contract.

11 (3) REQUIRED LANGUAGE.—The disclosure docu-
12 ment must contain, in close proximity to the signa-
13 ture of the student athlete, or, if the student athlete
14 is under the age of 18, the signature of such student
15 athlete's parent or legal guardian, a conspicuous no-
16 tice in boldface type stating: "Warning to Student
17 Athlete: If you agree orally or in writing to be rep-
18 resented by an agent now or in the future you may
19 lose your eligibility to compete as a student athlete
20 in your sport. Within 72 hours after entering into
21 this contract or before the next athletic event in
22 which you are eligible to participate, whichever oc-
23 curs first, both you and the agent by whom you are
24 agreeing to be represented must notify the athletic
25 director of the educational institution at which you

1 are enrolled, or other individual responsible for ath-
2 letic programs at such educational institution, that
3 you have entered into an agency contract.²²

4 **SEC. 4. ENFORCEMENT.**

5 (a) ~~UNFAIR OR DECEPTIVE ACT OR PRACTICE.~~—A
6 violation of this Act shall be treated as a violation of a
7 rule defining an unfair or deceptive act or practice pre-
8 scribed under section 18(a)(1)(B) of the Federal Trade
9 Commission Act (15 U.S.C. 57a(n)(1)(B)).

10 (b) ~~ACTIONS BY THE COMMISSION.~~—The Commis-
11 sion shall enforce this Act in the same manner, by the
12 same means, and with the same jurisdiction, powers, and
13 duties as though all applicable terms and provisions of the
14 Federal Trade Commission Act (15 U.S.C. 41 et seq.)
15 were incorporated into and made a part of this Act.

16 **SEC. 5. ACTIONS BY STATES.**

17 (a) ~~IN GENERAL.~~—

18 (1) ~~CIVIL ACTIONS.~~—In any case in which the
19 attorney general of a State has reason to believe
20 that an interest of the residents of that State has
21 been or is threatened or adversely affected by the
22 engagement of any athlete agent in a practice that
23 violates section 3 of this Act, the State may bring
24 a civil action on behalf of the residents of the State

1 in a district court of the United States of appropriate jurisdiction to—

2 (A) enjoin that practice;

3 (B) enforce compliance with this Act;

4 (C) obtain damage, restitution, or other
5 compensation on behalf of residents of the
6 State; or

7 (D) obtain such other relief as the court
8 may consider to be appropriate.

9 (2) NOTICE.—

10 (A) IN GENERAL.—Before filing an action
11 under paragraph (1), the attorney general of
12 the State involved shall provide to the Commission—

13 (i) written notice of that action; and

14 (ii) a copy of the complaint for that
15 action.

16 (B) EXEMPTION.—Subparagraph (A) shall
17 not apply with respect to the filing of an action
18 by an attorney general of a State under this
19 subsection, if the attorney general determines
20 that it is not feasible to provide the notice described
21 in that subparagraph before filing of the
22 action. In such case, the attorney general of a
23 State shall provide notice and a copy of the
24
25

1 complaint to the Commission at the same time
2 as the attorney general files the action.

3 ~~(b) INTERVENTION.—~~

4 ~~(1) IN GENERAL.—~~On receiving notice under
5 subsection ~~(a)(2)~~, the Commission shall have the
6 right to intervene in the action that is the subject
7 of the notice.

8 ~~(2) EFFECT OF INTERVENTION.—~~If the Com-
9 mission intervenes in an action under subsection ~~(a)~~,
10 it shall have the right—

11 ~~(A)~~ to be heard with respect to any matter
12 that arises in that action; and

13 ~~(B)~~ to file a petition for appeal.

14 ~~(c) CONSTRUCTION.—~~For purposes of bringing any
15 civil action under subsection ~~(a)~~, nothing in this title shall
16 be construed to prevent an attorney general of a State
17 from exercising the powers conferred on the attorney gen-
18 eral by the laws of that State to—

19 ~~(1)~~ conduct investigations;

20 ~~(2)~~ administer oaths or affirmations; or

21 ~~(3)~~ compel the attendance of witnesses or the
22 production of documentary and other evidence.

23 ~~(d) ACTIONS BY THE COMMISSION.—~~In any case in
24 which an action is instituted by or on behalf of the Com-
25 mission for a violation of section 3, no State may, during

1 the pendency of that action, institute an action under sub-
2 section (a) against any defendant named in the complaint
3 in that action.

4 (c) VENUE.—Any action brought under subsection
5 (a) may be brought in the district court of the United
6 States that meets applicable requirements relating to
7 venue under section 1391 of title 28, United States Code.

8 (f) SERVICE OF PROCESS.—In an action brought
9 under subsection (a), process may be served in any district
10 in which the defendant—

11 (1) is an inhabitant; or

12 (2) may be found.

13 **SEC. 6. PROTECTION OF EDUCATIONAL INSTITUTION.**

14 (a) NOTICE REQUIRED.—Within 72 hours after en-
15 tering into an agency contract or before the next athletic
16 event in which the student athlete may participate, which-
17 ever occurs first, the athlete agent and the student athlete
18 shall each inform the athletic director of the educational
19 institution at which the student athlete is enrolled, or
20 other individual responsible for athletic programs at such
21 educational institution, that the student athlete has en-
22 tered into an agency contract, and the athlete agent shall
23 provide the athletic director with notice in writing of such
24 a contract.

25 (b) CIVIL REMEDY.—

1 (1) ~~IN GENERAL.~~—An educational institution
2 has a right of action against an athlete agent for
3 damages caused by a violation of this Act.

4 (2) ~~DAMAGES.~~—Damages of an educational in-
5 stitution may include losses and expenses incurred
6 because, as a result of the conduct of the athlete
7 agent, the educational institution was injured by a
8 violation of this Act or was penalized, disqualified,
9 or suspended from participation in athletics by a na-
10 tional association for the promotion and regulation
11 of athletics; by an athletic conference; or by reason-
12 able self-imposed disciplinary action taken to miti-
13 gate actions likely to be imposed by such an associa-
14 tion or conference.

15 (3) ~~COSTS AND ATTORNEYS FEES.~~—In an ac-
16 tion taken under this section, the court may award
17 to the prevailing party costs and reasonable attor-
18 neys fees.

19 (4) ~~EFFECT ON OTHER RIGHTS, REMEDIES AND~~
20 ~~DEFENSES.~~—This section does not restrict the
21 rights, remedies, or defenses of any person under
22 law or equity.

23 **SEC. 7. SENSE OF CONGRESS.**

24 It is the sense of Congress that States should enact
25 the Uniform Athlete Agents Act of 2000 drafted by the

1 National Conference of Commissioners on Uniform State
2 Laws, to protect student athletes and the integrity of ama-
3 teur sports from unscrupulous sports agents. In par-
4 ticular, it is the sense of Congress that States should enact
5 the provisions relating to the registration of sports agents,
6 the required form of contract, the right of the student ath-
7 lete to cancel an agency contract, the disclosure require-
8 ments relating to record maintenance, reporting, renewal,
9 notice, warning, and security, and the provisions for reci-
10 procity among the States.

11 **SECTION 1. SHORT TITLE.**

12 *This Act may be cited as the “Sports Agent Responsi-*
13 *bility and Trust Act”.*

14 **SEC. 2. DEFINITIONS.**

15 *As used in this Act, the following definitions apply:*

16 (1) *AGENCY CONTRACT.*—*The term “agency con-*
17 *tract” means an oral or written agreement in which*
18 *a student athlete authorizes a person to negotiate or*
19 *solicit on behalf of the student athlete a professional*
20 *sports contract or an endorsement contract.*

21 (2) *ATHLETE AGENT.*—*The term “athlete agent”*
22 *means an individual who enters into an agency con-*
23 *tract with a student athlete, or directly or indirectly*
24 *recruits or solicits a student athlete to enter into an*
25 *agency contract, and does not include a spouse, par-*

1 *ent, sibling, grandparent, or guardian of such student*
2 *athlete, any legal counsel for purposes other than that*
3 *of representative agency, or an individual acting sole-*
4 *ly on behalf of a professional sports team or profes-*
5 *sional sports organization.*

6 (3) *ATHLETIC DIRECTOR.*—*The term “athletic*
7 *director” means an individual responsible for admin-*
8 *istering the athletic program of an educational insti-*
9 *tution or, in the case that such program is adminis-*
10 *tered separately, the athletic program for male stu-*
11 *dents or the athletic program for female students, as*
12 *appropriate.*

13 (4) *COMMISSION.*—*The term “Commission”*
14 *means the Federal Trade Commission.*

15 (5) *ENDORSEMENT CONTRACT.*—*The term “en-*
16 *dorsement contract” means an agreement under*
17 *which a student athlete is employed or receives con-*
18 *sideration for the use by the other party of that indi-*
19 *vidual’s person, name, image, or likeness in the pro-*
20 *motion of any product, service, or event.*

21 (6) *INTERCOLLEGIATE SPORT.*—*The term “inter-*
22 *collegiate sport” means a sport played at the colle-*
23 *giate level for which eligibility requirements for par-*
24 *ticipation by a student athlete are established by a*

1 *national association for the promotion or regulation*
2 *of college athletics.*

3 (7) *PROFESSIONAL SPORTS CONTRACT.*—*The*
4 *term “professional sports contract” means an agree-*
5 *ment under which an individual is employed, or*
6 *agrees to render services, as a player on a profes-*
7 *sional sports team, with a professional sports organi-*
8 *zation, or as a professional athlete.*

9 (8) *STATE.*—*The term “State” includes a State*
10 *of the United States, the District of Columbia, Puerto*
11 *Rico, the United States Virgin Islands, or any terri-*
12 *tory or insular possession subject to the jurisdiction*
13 *of the United States.*

14 (9) *STUDENT ATHLETE.*—*The term “student ath-*
15 *lete” means an individual who engages in, is eligible*
16 *to engage in, or may be eligible in the future to en-*
17 *gage in, any intercollegiate sport. An individual who*
18 *is permanently ineligible to participate in a par-*
19 *ticular intercollegiate sport is not a student athlete*
20 *for purposes of that sport.*

1 **SEC. 3. REGULATION OF UNFAIR AND DECEPTIVE ACTS AND**
2 **PRACTICES IN CONNECTION WITH THE CON-**
3 **TACT BETWEEN AN ATHLETE AGENT AND A**
4 **STUDENT ATHLETE.**

5 (a) *CONDUCT PROHIBITED.—It is unlawful for an ath-*
6 *lete agent to—*

7 (1) *directly or indirectly recruit or solicit a stu-*
8 *dent athlete to enter into an agency contract, by—*

9 (A) *giving any false or misleading informa-*
10 *tion or making a false promise or representation;*
11 *or*

12 (B) *providing anything of value to a stu-*
13 *dent athlete or anyone associated with the stu-*
14 *dent athlete before the student athlete enters into*
15 *an agency contract, including any consideration*
16 *in the form of a loan, or acting in the capacity*
17 *of a guarantor or co-guarantor for any debt;*

18 (2) *enter into an agency contract with a student*
19 *athlete without providing the student athlete with the*
20 *disclosure document described in subsection (b); or*

21 (3) *predate or postdate an agency contract.*

22 (b) **REQUIRED DISCLOSURE BY ATHLETE AGENTS TO**
23 **STUDENT ATHLETES.—**

24 (1) *IN GENERAL.—In conjunction with the enter-*
25 *ing into of an agency contract, an athlete agent shall*
26 *provide to the student athlete, or, if the student athlete*

1 *is under the age of 18, to such student athlete's parent*
2 *or legal guardian, a disclosure document that meets*
3 *the requirements of this subsection. Such disclosure*
4 *document is separate from and in addition to any*
5 *disclosure which may be required under State law.*

6 (2) *SIGNATURE OF STUDENT ATHLETE.—The*
7 *disclosure document must be signed by the student*
8 *athlete, or, if the student athlete is under the age of*
9 *18, by such student athlete's parent or legal guardian,*
10 *prior to entering into the agency contract.*

11 (3) *REQUIRED LANGUAGE.—The disclosure docu-*
12 *ment must contain, in close proximity to the signa-*
13 *ture of the student athlete, or, if the student athlete*
14 *is under the age of 18, the signature of such student*
15 *athlete's parent or legal guardian, a conspicuous no-*
16 *tice in boldface type stating: "Warning to Student*
17 *Athlete: If you agree orally or in writing to be rep-*
18 *resented by an agent now or in the future you may*
19 *lose your eligibility to compete as a student athlete in*
20 *your sport. Within 72 hours after entering into this*
21 *contract or before the next athletic event in which you*
22 *are eligible to participate, whichever occurs first, both*
23 *you and the agent by whom you are agreeing to be*
24 *represented must notify the athletic director of the*
25 *educational institution at which you are enrolled, or*

1 *other individual responsible for athletic programs at*
2 *such educational institution, that you have entered*
3 *into an agency contract.”.*

4 **SEC. 4. ENFORCEMENT.**

5 (a) *UNFAIR OR DECEPTIVE ACT OR PRACTICE.—A vio-*
6 *lation of this Act shall be treated as a violation of a rule*
7 *defining an unfair or deceptive act or practice prescribed*
8 *under section 18(a)(1)(B) of the Federal Trade Commission*
9 *Act (15 U.S.C. 57a(a)(1)(B)).*

10 (b) *ACTIONS BY THE COMMISSION.—The Commission*
11 *shall enforce this Act in the same manner, by the same*
12 *means, and with the same jurisdiction, powers, and duties*
13 *as though all applicable terms and provisions of the Federal*
14 *Trade Commission Act (15 U.S.C. 41 et seq.) were incor-*
15 *porated into and made a part of this Act.*

16 **SEC. 5. ACTIONS BY STATES.**

17 (a) *IN GENERAL.—*

18 (1) *CIVIL ACTIONS.—In any case in which the*
19 *attorney general of a State has reason to believe that*
20 *an interest of the residents of that State has been or*
21 *is threatened or adversely affected by the engagement*
22 *of any athlete agent in a practice that violates section*
23 *3 of this Act, the State may bring a civil action on*
24 *behalf of the residents of the State in a district court*
25 *of the United States of appropriate jurisdiction to—*

- 1 (A) *enjoin that practice;*
2 (B) *enforce compliance with this Act; or*
3 (C) *obtain damage, restitution, or other*
4 *compensation on behalf of residents of the State.*

5 (2) *NOTICE.—*

6 (A) *IN GENERAL.—Before filing an action*
7 *under paragraph (1), the attorney general of the*
8 *State involved shall provide to the Commis-*
9 *sion—*

- 10 (i) *written notice of that action; and*
11 (ii) *a copy of the complaint for that*
12 *action.*

13 (B) *EXEMPTION.—Subparagraph (A) shall*
14 *not apply with respect to the filing of an action*
15 *by an attorney general of a State under this sub-*
16 *section, if the attorney general determines that it*
17 *is not feasible to provide the notice described in*
18 *that subparagraph before filing of the action. In*
19 *such case, the attorney general of a State shall*
20 *provide notice and a copy of the complaint to the*
21 *Commission at the same time as the attorney*
22 *general files the action.*

23 (b) *INTERVENTION.—*

24 (1) *IN GENERAL.—On receiving notice under*
25 *subsection (a)(2), the Commission shall have the right*

1 to intervene in the action that is the subject of the no-
2 tice.

3 (2) *EFFECT OF INTERVENTION.*—If the Commis-
4 sion intervenes in an action under subsection (a), it
5 shall have the right—

6 (A) to be heard with respect to any matter
7 that arises in that action; and

8 (B) to file a petition for appeal.

9 (c) *CONSTRUCTION.*—For purposes of bringing any
10 civil action under subsection (a), nothing in this title shall
11 be construed to prevent an attorney general of a State from
12 exercising the powers conferred on the attorney general by
13 the laws of that State to—

14 (1) conduct investigations;

15 (2) administer oaths or affirmations; or

16 (3) compel the attendance of witnesses or the
17 production of documentary and other evidence.

18 (d) *ACTIONS BY THE COMMISSION.*—In any case in
19 which an action is instituted by or on behalf of the Commis-
20 sion for a violation of section 3, no State may, during the
21 pendency of that action, institute an action under sub-
22 section (a) against any defendant named in the complaint
23 in that action.

24 (e) *VENUE.*—Any action brought under subsection (a)
25 may be brought in the district court of the United States

1 *that meets applicable requirements relating to venue under*
2 *section 1391 of title 28, United States Code.*

3 (f) *SERVICE OF PROCESS.—In an action brought*
4 *under subsection (a), process may be served in any district*
5 *in which the defendant—*

6 (1) *is an inhabitant; or*

7 (2) *may be found.*

8 **SEC. 6. PROTECTION OF EDUCATIONAL INSTITUTION.**

9 (a) *NOTICE REQUIRED.—Within 72 hours after enter-*
10 *ing into an agency contract or before the next athletic event*
11 *in which the student athlete may participate, whichever oc-*
12 *curs first, the athlete agent and the student athlete shall*
13 *each inform the athletic director of the educational institu-*
14 *tion at which the student athlete is enrolled, or other indi-*
15 *vidual responsible for athletic programs at such educational*
16 *institution, that the student athlete has entered into an*
17 *agency contract, and the athlete agent shall provide the ath-*
18 *letic director with notice in writing of such a contract.*

19 (b) *CIVIL REMEDY.—*

20 (1) *IN GENERAL.—An educational institution*
21 *has a right of action against an athlete agent for*
22 *damages caused by a violation of this Act.*

23 (2) *DAMAGES.—Damages of an educational in-*
24 *stitution may include and are limited to actual losses*
25 *and expenses incurred because, as a result of the con-*

1 *duct of the athlete agent, the educational institution*
2 *was injured by a violation of this Act or was penal-*
3 *ized, disqualified, or suspended from participation in*
4 *athletics by a national association for the promotion*
5 *and regulation of athletics, by an athletic conference,*
6 *or by reasonable self-imposed disciplinary action*
7 *taken to mitigate actions likely to be imposed by such*
8 *an association or conference.*

9 (3) *COSTS AND ATTORNEYS FEES.—In an action*
10 *taken under this section, the court may award to the*
11 *prevailing party costs and reasonable attorneys fees.*

12 (4) *EFFECT ON OTHER RIGHTS, REMEDIES AND*
13 *DEFENSES.—This section does not restrict the rights,*
14 *remedies, or defenses of any person under law or eq-*
15 *uity.*

16 **SEC. 7. LIMITATION.**

17 *Nothing in this Act shall be construed to prohibit an*
18 *individual from seeking any remedies available under exist-*
19 *ing Federal or State law or equity.*

20 **SEC. 8. SENSE OF CONGRESS.**

21 *It is the sense of Congress that States should enact the*
22 *Uniform Athlete Agents Act of 2000 drafted by the National*
23 *Conference of Commissioners on Uniform State Laws, to*
24 *protect student athletes and the integrity of amateur sports*
25 *from unscrupulous sports agents. In particular, it is the*

1 *sense of Congress that States should enact the provisions*
2 *relating to the registration of sports agents, the required*
3 *form of contract, the right of the student athlete to cancel*
4 *an agency contract, the disclosure requirements relating to*
5 *record maintenance, reporting, renewal, notice, warning,*
6 *and security, and the provisions for reciprocity among the*
7 *States.*

DOCUMENT NO. 13

108TH CONGRESS
1ST SESSION

H. R. 361

AN ACT

To designate certain conduct by sports agents relating to the signing of contracts with student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission.

108TH CONGRESS
1ST SESSION

H. R. 361

AN ACT

To designate certain conduct by sports agents relating to the signing of contracts with student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Sports Agent Respon-
3 sibility and Trust Act”.

4 **SEC. 2. DEFINITIONS.**

5 As used in this Act, the following definitions apply:

6 (1) **AGENCY CONTRACT.**—The term “agency
7 contract” means an oral or written agreement in
8 which a student athlete authorizes a person to nego-
9 tiate or solicit on behalf of the student athlete a pro-
10 fessional sports contract or an endorsement contract.

11 (2) **ATHLETE AGENT.**—The term “athlete
12 agent” means an individual who enters into an agen-
13 cy contract with a student athlete, or directly or in-
14 directly recruits or solicits a student athlete to enter
15 into an agency contract, and does not include a
16 spouse, parent, sibling, grandparent, or guardian of
17 such student athlete, any legal counsel for purposes
18 other than that of representative agency, or an indi-
19 vidual acting solely on behalf of a professional sports
20 team or professional sports organization.

21 (3) **ATHLETIC DIRECTOR.**—The term “athletic
22 director” means an individual responsible for admin-
23 istering the athletic program of an educational insti-
24 tution or, in the case that such program is adminis-
25 tered separately, the athletic program for male stu-

1 dents or the athletic program for female students, as
2 appropriate.

3 (4) COMMISSION.—The term “Commission”
4 means the Federal Trade Commission.

5 (5) ENDORSEMENT CONTRACT.—The term “en-
6 dorsement contract” means an agreement under
7 which a student athlete is employed or receives con-
8 sideration for the use by the other party of that in-
9 dividual’s person, name, image, or likeness in the
10 promotion of any product, service, or event.

11 (6) INTERCOLLEGIATE SPORT.—The term
12 “intercollegiate sport” means a sport played at the
13 collegiate level for which eligibility requirements for
14 participation by a student athlete are established by
15 a national association for the promotion or regula-
16 tion of college athletics.

17 (7) PROFESSIONAL SPORTS CONTRACT.—The
18 term “professional sports contract” means an agree-
19 ment under which an individual is employed, or
20 agrees to render services, as a player on a profes-
21 sional sports team, with a professional sports organi-
22 zation, or as a professional athlete.

23 (8) STATE.—The term “State” includes a State
24 of the United States, the District of Columbia, Puer-
25 to Rico, the United States Virgin Islands, or any

1 territory or insular possession subject to the jurisdic-
2 tion of the United States.

3 (9) STUDENT ATHLETE.—The term “student
4 athlete” means an individual who engages in, is eli-
5 gible to engage in, or may be eligible in the future
6 to engage in, any intercollegiate sport. An individual
7 who is permanently ineligible to participate in a par-
8 ticular intercollegiate sport is not a student athlete
9 for purposes of that sport.

10 **SEC. 3. REGULATION OF UNFAIR AND DECEPTIVE ACTS**
11 **AND PRACTICES IN CONNECTION WITH THE**
12 **CONTACT BETWEEN AN ATHLETE AGENT AND**
13 **A STUDENT ATHLETE.**

14 (a) CONDUCT PROHIBITED.—It is unlawful for an
15 athlete agent to—

16 (1) directly or indirectly recruit or solicit a stu-
17 dent athlete to enter into an agency contract, by—

18 (A) giving any false or misleading informa-
19 tion or making a false promise or representa-
20 tion; or

21 (B) providing anything of value to a stu-
22 dent athlete or anyone associated with the stu-
23 dent athlete before the student athlete enters
24 into an agency contract, including any consider-
25 ation in the form of a loan, or acting in the ca-

1 capacity of a guarantor or co-guarantor for any
2 debt;

3 (2) enter into an agency contract with a stu-
4 dent athlete without providing the student athlete
5 with the disclosure document described in subsection
6 (b); or

7 (3) predate or postdate an agency contract.

8 (b) REQUIRED DISCLOSURE BY ATHLETE AGENTS
9 TO STUDENT ATHLETES.—

10 (1) IN GENERAL.—In conjunction with the en-
11 tering into of an agency contract, an athlete agent
12 shall provide to the student athlete, or, if the stu-
13 dent athlete is under the age of 18, to such student
14 athlete's parent or legal guardian, a disclosure docu-
15 ment that meets the requirements of this subsection.
16 Such disclosure document is separate from and in
17 addition to any disclosure which may be required
18 under State law.

19 (2) SIGNATURE OF STUDENT ATHLETE.—The
20 disclosure document must be signed by the student
21 athlete, or, if the student athlete is under the age of
22 18, by such student athlete's parent or legal guard-
23 ian, prior to entering into the agency contract.

24 (3) REQUIRED LANGUAGE.—The disclosure docu-
25 ment must contain, in close proximity to the signa-

1 ture of the student athlete, or, if the student athlete
2 is under the age of 18, the signature of such student
3 athlete's parent or legal guardian, a conspicuous no-
4 tice in boldface type stating: "Warning to Student
5 Athlete: If you agree orally or in writing to be rep-
6 resented by an agent now or in the future you may
7 lose your eligibility to compete as a student athlete
8 in your sport. Within 72 hours after entering into
9 this contract or before the next athletic event in
10 which you are eligible to participate, whichever oc-
11 curs first, both you and the agent by whom you are
12 agreeing to be represented must notify the athletic
13 director of the educational institution at which you
14 are enrolled, or other individual responsible for ath-
15 letic programs at such educational institution, that
16 you have entered into an agency contract."

17 **SEC. 4. ENFORCEMENT.**

18 (a) UNFAIR OR DECEPTIVE ACT OR PRACTICE.—A
19 violation of this Act shall be treated as a violation of a
20 rule defining an unfair or deceptive act or practice pre-
21 scribed under section 18(a)(1)(B) of the Federal Trade
22 Commission Act (15 U.S.C. 57a(a)(1)(B)).

23 (b) ACTIONS BY THE COMMISSION.—The Commis-
24 sion shall enforce this Act in the same manner, by the
25 same means, and with the same jurisdiction, powers, and

1 duties as though all applicable terms and provisions of the
2 Federal Trade Commission Act (15 U.S.C. 41 et seq.)
3 were incorporated into and made a part of this Act.

4 **SEC. 5. ACTIONS BY STATES.**

5 (a) IN GENERAL.—

6 (1) CIVIL ACTIONS.—In any case in which the
7 attorney general of a State has reason to believe
8 that an interest of the residents of that State has
9 been or is threatened or adversely affected by the
10 engagement of any athlete agent in a practice that
11 violates section 3 of this Act, the State may bring
12 a civil action on behalf of the residents of the State
13 in a district court of the United States of appropriate
14 jurisdiction to—

15 (A) enjoin that practice;

16 (B) enforce compliance with this Act; or

17 (C) obtain damage, restitution, or other
18 compensation on behalf of residents of the
19 State.

20 (2) NOTICE.—

21 (A) IN GENERAL.—Before filing an action
22 under paragraph (1), the attorney general of
23 the State involved shall provide to the
24 Commission—

25 (i) written notice of that action; and

1 (ii) a copy of the complaint for that
2 action.

3 (B) EXEMPTION.—Subparagraph (A) shall
4 not apply with respect to the filing of an action
5 by an attorney general of a State under this
6 subsection, if the attorney general determines
7 that it is not feasible to provide the notice de-
8 scribed in that subparagraph before filing of the
9 action. In such case, the attorney general of a
10 State shall provide notice and a copy of the
11 complaint to the Commission at the same time
12 as the attorney general files the action.

13 (b) INTERVENTION.—

14 (1) IN GENERAL.—On receiving notice under
15 subsection (a)(2), the Commission shall have the
16 right to intervene in the action that is the subject
17 of the notice.

18 (2) EFFECT OF INTERVENTION.—If the Com-
19 mission intervenes in an action under subsection (a),
20 it shall have the right—

21 (A) to be heard with respect to any matter
22 that arises in that action; and

23 (B) to file a petition for appeal.

24 (c) CONSTRUCTION.—For purposes of bringing any
25 civil action under subsection (a), nothing in this title shall

1 be construed to prevent an attorney general of a State
2 from exercising the powers conferred on the attorney gen-
3 eral by the laws of that State to—

- 4 (1) conduct investigations;
- 5 (2) administer oaths or affirmations; or
- 6 (3) compel the attendance of witnesses or the
7 production of documentary and other evidence.

8 (d) **ACTIONS BY THE COMMISSION.**—In any case in
9 which an action is instituted by or on behalf of the Com-
10 mission for a violation of section 3, no State may, during
11 the pendency of that action, institute an action under sub-
12 section (a) against any defendant named in the complaint
13 in that action.

14 (e) **VENUE.**—Any action brought under subsection
15 (a) may be brought in the district court of the United
16 States that meets applicable requirements relating to
17 venue under section 1391 of title 28, United States Code.

18 (f) **SERVICE OF PROCESS.**—In an action brought
19 under subsection (a), process may be served in any district
20 in which the defendant—

- 21 (1) is an inhabitant; or
- 22 (2) may be found.

23 **SEC. 6. PROTECTION OF EDUCATIONAL INSTITUTION.**

24 (a) **NOTICE REQUIRED.**—Within 72 hours after en-
25 tering into an agency contract or before the next athletic

1 event in which the student athlete may participate, which-
2 ever occurs first, the athlete agent and the student athlete
3 shall each inform the athletic director of the educational
4 institution at which the student athlete is enrolled, or
5 other individual responsible for athletic programs at such
6 educational institution, that the student athlete has en-
7 tered into an agency contract, and the athlete agent shall
8 provide the athletic director with notice in writing of such
9 a contract.

10 (b) CIVIL REMEDY.—

11 (1) IN GENERAL.—An educational institution
12 has a right of action against an athlete agent for
13 damages caused by a violation of this Act.

14 (2) DAMAGES.—Damages of an educational institu-
15 tion may include and are limited to actual losses
16 and expenses incurred because, as a result of the
17 conduct of the athlete agent, the educational institu-
18 tion was injured by a violation of this Act or was pe-
19 nalized, disqualified, or suspended from participation
20 in athletics by a national association for the pro-
21 motion and regulation of athletics, by an athletic
22 conference, or by reasonable self-imposed discipli-
23 nary action taken to mitigate actions likely to be im-
24 posed by such an association or conference.

1 (3) COSTS AND ATTORNEYS FEES.—In an ac-
2 tion taken under this section, the court may award
3 to the prevailing party costs and reasonable attor-
4 neys fees.

5 (4) EFFECT ON OTHER RIGHTS, REMEDIES AND
6 DEFENSES.—This section does not restrict the
7 rights, remedies, or defenses of any person under
8 law or equity.

9 **SEC. 7. LIMITATION.**

10 Nothing in this Act shall be construed to prohibit an
11 individual from seeking any remedies available under ex-
12 isting Federal or State law or equity.

13 **SEC. 8. SENSE OF CONGRESS.**

14 It is the sense of Congress that States should enact
15 the Uniform Athlete Agents Act of 2000 drafted by the
16 National Conference of Commissioners on Uniform State
17 Laws, to protect student athletes and the integrity of ama-
18 teur sports from unscrupulous sports agents. In par-
19 ticular, it is the sense of Congress that States should enact
20 the provisions relating to the registration of sports agents,
21 the required form of contract, the right of the student ath-
22 lete to cancel an agency contract, the disclosure require-
23 ments relating to record maintenance, reporting, renewal,

- 1 notice, warning, and security, and the provisions for reci-
- 2 procity among the States.

Passed the House of Representatives June 4, 2003.

Attest:

Clerk.

DOCUMENT NO. 14

108TH CONGRESS
1ST SESSION

H. R. 361

IN THE SENATE OF THE UNITED STATES

JUNE 5, 2003

Received; read twice and referred to the Committee on Commerce, Science,
and Transportation

AN ACT

To designate certain conduct by sports agents relating to the signing of contracts with student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Sports Agent Respon-
3 sibility and Trust Act”.

4 **SEC. 2. DEFINITIONS.**

5 As used in this Act, the following definitions apply:

6 (1) **AGENCY CONTRACT.**—The term “agency
7 contract” means an oral or written agreement in
8 which a student athlete authorizes a person to nego-
9 tiate or solicit on behalf of the student athlete a pro-
10 fessional sports contract or an endorsement contract.

11 (2) **ATHLETE AGENT.**—The term “athlete
12 agent” means an individual who enters into an agen-
13 cy contract with a student athlete, or directly or in-
14 directly recruits or solicits a student athlete to enter
15 into an agency contract, and does not include a
16 spouse, parent, sibling, grandparent, or guardian of
17 such student athlete, any legal counsel for purposes
18 other than that of representative agency, or an indi-
19 vidual acting solely on behalf of a professional sports
20 team or professional sports organization.

21 (3) **ATHLETIC DIRECTOR.**—The term “athletic
22 director” means an individual responsible for admin-
23 istering the athletic program of an educational insti-
24 tution or, in the case that such program is adminis-
25 tered separately, the athletic program for male stu-

1 dents or the athletic program for female students, as
2 appropriate.

3 (4) COMMISSION.—The term “Commission”
4 means the Federal Trade Commission.

5 (5) ENDORSEMENT CONTRACT.—The term “en-
6 dorsement contract” means an agreement under
7 which a student athlete is employed or receives con-
8 sideration for the use by the other party of that in-
9 dividual’s person, name, image, or likeness in the
10 promotion of any product, service, or event.

11 (6) INTERCOLLEGIATE SPORT.—The term
12 “intercollegiate sport” means a sport played at the
13 collegiate level for which eligibility requirements for
14 participation by a student athlete are established by
15 a national association for the promotion or regula-
16 tion of college athletics.

17 (7) PROFESSIONAL SPORTS CONTRACT.—The
18 term “professional sports contract” means an agree-
19 ment under which an individual is employed, or
20 agrees to render services, as a player on a profes-
21 sional sports team, with a professional sports organi-
22 zation, or as a professional athlete.

23 (8) STATE.—The term “State” includes a State
24 of the United States, the District of Columbia, Puer-
25 to Rico, the United States Virgin Islands, or any

1 territory or insular possession subject to the jurisdic-
2 tion of the United States.

3 (9) STUDENT ATHLETE.—The term “student
4 athlete” means an individual who engages in, is eli-
5 gible to engage in, or may be eligible in the future
6 to engage in, any intercollegiate sport. An individual
7 who is permanently ineligible to participate in a par-
8 ticular intercollegiate sport is not a student athlete
9 for purposes of that sport.

10 **SEC. 3. REGULATION OF UNFAIR AND DECEPTIVE ACTS**
11 **AND PRACTICES IN CONNECTION WITH THE**
12 **CONTACT BETWEEN AN ATHLETE AGENT AND**
13 **A STUDENT ATHLETE.**

14 (a) CONDUCT PROHIBITED.—It is unlawful for an
15 athlete agent to—

16 (1) directly or indirectly recruit or solicit a stu-
17 dent athlete to enter into an agency contract, by—

18 (A) giving any false or misleading informa-
19 tion or making a false promise or representa-
20 tion; or

21 (B) providing anything of value to a stu-
22 dent athlete or anyone associated with the stu-
23 dent athlete before the student athlete enters
24 into an agency contract, including any consider-
25 ation in the form of a loan, or acting in the ca-

1 pacity of a guarantor or co-guarantor for any
2 debt;

3 (2) enter into an agency contract with a stu-
4 dent athlete without providing the student athlete
5 with the disclosure document described in subsection
6 (b); or

7 (3) predate or postdate an agency contract.

8 (b) REQUIRED DISCLOSURE BY ATHLETE AGENTS
9 TO STUDENT ATHLETES.—

10 (1) IN GENERAL.—In conjunction with the en-
11 tering into of an agency contract, an athlete agent
12 shall provide to the student athlete, or, if the stu-
13 dent athlete is under the age of 18, to such student
14 athlete's parent or legal guardian, a disclosure docu-
15 ment that meets the requirements of this subsection.
16 Such disclosure document is separate from and in
17 addition to any disclosure which may be required
18 under State law.

19 (2) SIGNATURE OF STUDENT ATHLETE.—The
20 disclosure document must be signed by the student
21 athlete, or, if the student athlete is under the age of
22 18, by such student athlete's parent or legal guard-
23 ian, prior to entering into the agency contract.

24 (3) REQUIRED LANGUAGE.—The disclosure doc-
25 ument must contain, in close proximity to the signa-

1 ture of the student athlete, or, if the student athlete
2 is under the age of 18, the signature of such student
3 athlete's parent or legal guardian, a conspicuous no-
4 tice in boldface type stating: "Warning to Student
5 Athlete: If you agree orally or in writing to be rep-
6 resented by an agent now or in the future you may
7 lose your eligibility to compete as a student athlete
8 in your sport. Within 72 hours after entering into
9 this contract or before the next athletic event in
10 which you are eligible to participate, whichever oc-
11 curs first, both you and the agent by whom you are
12 agreeing to be represented must notify the athletic
13 director of the educational institution at which you
14 are enrolled, or other individual responsible for ath-
15 letic programs at such educational institution, that
16 you have entered into an agency contract."

17 **SEC. 4. ENFORCEMENT.**

18 (a) UNFAIR OR DECEPTIVE ACT OR PRACTICE.—A
19 violation of this Act shall be treated as a violation of a
20 rule defining an unfair or deceptive act or practice pre-
21 scribed under section 18(a)(1)(B) of the Federal Trade
22 Commission Act (15 U.S.C. 57a(a)(1)(B)).

23 (b) ACTIONS BY THE COMMISSION.—The Commis-
24 sion shall enforce this Act in the same manner, by the
25 same means, and with the same jurisdiction, powers, and

1 duties as though all applicable terms and provisions of the
2 Federal Trade Commission Act (15 U.S.C. 41 et seq.)
3 were incorporated into and made a part of this Act.

4 **SEC. 5. ACTIONS BY STATES.**

5 (a) IN GENERAL.—

6 (1) CIVIL ACTIONS.—In any case in which the
7 attorney general of a State has reason to believe
8 that an interest of the residents of that State has
9 been or is threatened or adversely affected by the
10 engagement of any athlete agent in a practice that
11 violates section 3 of this Act, the State may bring
12 a civil action on behalf of the residents of the State
13 in a district court of the United States of appro-
14 priate jurisdiction to—

15 (A) enjoin that practice;

16 (B) enforce compliance with this Act; or

17 (C) obtain damage, restitution, or other
18 compensation on behalf of residents of the
19 State.

20 (2) NOTICE.—

21 (A) IN GENERAL.—Before filing an action
22 under paragraph (1), the attorney general of
23 the State involved shall provide to the Commis-
24 sion—

25 (i) written notice of that action; and

1 (ii) a copy of the complaint for that
2 action.

3 (B) EXEMPTION.—Subparagraph (A) shall
4 not apply with respect to the filing of an action
5 by an attorney general of a State under this
6 subsection, if the attorney general determines
7 that it is not feasible to provide the notice de-
8 scribed in that subparagraph before filing of the
9 action. In such case, the attorney general of a
10 State shall provide notice and a copy of the
11 complaint to the Commission at the same time
12 as the attorney general files the action.

13 (h) INTERVENTION.—

14 (1) IN GENERAL.—On receiving notice under
15 subsection (a)(2), the Commission shall have the
16 right to intervene in the action that is the subject
17 of the notice.

18 (2) EFFECT OF INTERVENTION.—If the Com-
19 mission intervenes in an action under subsection (a),
20 it shall have the right—

21 (A) to be heard with respect to any matter
22 that arises in that action; and

23 (B) to file a petition for appeal.

24 (c) CONSTRUCTION.—For purposes of bringing any
25 civil action under subsection (a), nothing in this title shall

1 be construed to prevent an attorney general of a State
2 from exercising the powers conferred on the attorney gen-
3 eral by the laws of that State to—

- 4 (1) conduct investigations;
5 (2) administer oaths or affirmations; or
6 (3) compel the attendance of witnesses or the
7 production of documentary and other evidence.

8 (d) **ACTIONS BY THE COMMISSION.**—In any case in
9 which an action is instituted by or on behalf of the Com-
10 mission for a violation of section 3, no State may, during
11 the pendency of that action, institute an action under sub-
12 section (a) against any defendant named in the complaint
13 in that action.

14 (e) **VENUE.**—Any action brought under subsection
15 (a) may be brought in the district court of the United
16 States that meets applicable requirements relating to
17 venue under section 1391 of title 28, United States Code.

18 (f) **SERVICE OF PROCESS.**—In an action brought
19 under subsection (a), process may be served in any district
20 in which the defendant—

- 21 (1) is an inhabitant; or
22 (2) may be found.

23 **SEC. 6. PROTECTION OF EDUCATIONAL INSTITUTION.**

24 (a) **NOTICE REQUIRED.**—Within 72 hours after en-
25 tering into an agency contract or before the next athletic

1 event in which the student athlete may participate, which-
2 ever occurs first, the athlete agent and the student athlete
3 shall each inform the athletic director of the educational
4 institution at which the student athlete is enrolled, or
5 other individual responsible for athletic programs at such
6 educational institution, that the student athlete has en-
7 tered into an agency contract, and the athlete agent shall
8 provide the athletic director with notice in writing of such
9 a contract.

10 (b) CIVIL REMEDY.—

11 (1) IN GENERAL.—An educational institution
12 has a right of action against an athlete agent for
13 damages caused by a violation of this Act.

14 (2) DAMAGES.—Damages of an educational in-
15 stitution may include and are limited to actual losses
16 and expenses incurred because, as a result of the
17 conduct of the athlete agent, the educational institu-
18 tion was injured by a violation of this Act or was pe-
19 nalized, disqualified, or suspended from participation
20 in athletics by a national association for the pro-
21 motion and regulation of athletics, by an athletic
22 conference, or by reasonable self-imposed discipli-
23 nary action taken to mitigate actions likely to be im-
24 posed by such an association or conference.

1 (3) COSTS AND ATTORNEYS FEES.—In an ac-
2 tion taken under this section, the court may award
3 to the prevailing party costs and reasonable attor-
4 neys fees.

5 (4) EFFECT ON OTHER RIGHTS, REMEDIES AND
6 DEFENSES.—This section does not restrict the
7 rights, remedies, or defenses of any person under
8 law or equity.

9 **SEC. 7. LIMITATION.**

10 Nothing in this Act shall be construed to prohibit an
11 individual from seeking any remedies available under ex-
12 isting Federal or State law or equity.

13 **SEC. 8. SENSE OF CONGRESS.**

14 It is the sense of Congress that States should enact
15 the Uniform Athlete Agents Act of 2000 drafted by the
16 National Conference of Commissioners on Uniform State
17 Laws, to protect student athletes and the integrity of ama-
18 teur sports from unscrupulous sports agents. In par-
19 ticular, it is the sense of Congress that States should enact
20 the provisions relating to the registration of sports agents,
21 the required form of contract, the right of the student ath-
22 lete to cancel an agency contract, the disclosure require-
23 ments relating to record maintenance, reporting, renewal,

1 notice, warning, and security, and the provisions for reci-
2 procity among the States.

Passed the House of Representatives June 4, 2003.

Attest: JEFF TRANDAHL,
Clerk.

DOCUMENT NO. 15

One Hundred Eighth Congress
of the
United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Tuesday,
the twentieth day of January, two thousand and four*

An Act

To designate certain conduct by sports agents relating to the signing of contracts with student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "Sports Agent Responsibility and Trust Act".

SEC. 2. DEFINITIONS.

As used in this Act, the following definitions apply:

(1) **AGENCY CONTRACT.**—The term "agency contract" means an oral or written agreement in which a student athlete authorizes a person to negotiate or solicit on behalf of the student athlete a professional sports contract or an endorsement contract.

(2) **ATHLETE AGENT.**—The term "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, and does not include a spouse, parent, sibling, grandparent, or guardian of such student athlete, any legal counsel for purposes other than that of representative agency, or an individual acting solely on behalf of a professional sports team or professional sports organization.

(3) **ATHLETIC DIRECTOR.**—The term "athletic director" means an individual responsible for administering the athletic program of an educational institution or, in the case that such program is administered separately, the athletic program for male students or the athletic program for female students, as appropriate.

(4) **COMMISSION.**—The term "Commission" means the Federal Trade Commission.

(5) **ENDORSEMENT CONTRACT.**—The term "endorsement contract" means an agreement under which a student athlete is employed or receives consideration for the use by the other party of that individual's person, name, image, or likeness in the promotion of any product, service, or event.

(6) **INTERCOLLEGIATE SPORT.**—The term "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 college athletics.

(7) **PROFESSIONAL SPORTS CONTRACT.**—The term “professional sports 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.

(8) **STATE.**—The term “State” includes 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.

(9) **STUDENT ATHLETE.**—The term “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. An individual who is permanently ineligible to participate in a particular intercollegiate sport is not a student athlete for purposes of that sport.

SEC. 3. REGULATION OF UNFAIR AND DECEPTIVE ACTS AND PRACTICES IN CONNECTION WITH THE CONTACT BETWEEN AN ATHLETE AGENT AND A STUDENT ATHLETE.

(a) **CONDUCT PROHIBITED.**—It is unlawful for an athlete agent to—

(1) directly or indirectly recruit or solicit a student athlete to enter into an agency contract, by—

(A) giving any false or misleading information or making a false promise or representation; or

(B) providing anything of value to a student athlete or anyone associated with the student athlete before the student athlete enters into an agency contract, including any consideration in the form of a loan, or acting in the capacity of a guarantor or co-guarantor for any debt;

(2) enter into an agency contract with a student athlete without providing the student athlete with the disclosure document described in subsection (b); or

(3) predate or postdate an agency contract.

(b) **REQUIRED DISCLOSURE BY ATHLETE AGENTS TO STUDENT ATHLETES.**—

(1) **IN GENERAL.**—In conjunction with the entering into of an agency contract, an athlete agent shall provide to the student athlete, or, if the student athlete is under the age of 18, to such student athlete’s parent or legal guardian, a disclosure document that meets the requirements of this subsection. Such disclosure document is separate from and in addition to any disclosure which may be required under State law.

(2) **SIGNATURE OF STUDENT ATHLETE.**—The disclosure document must be signed by the student athlete, or, if the student athlete is under the age of 18, by such student athlete’s parent or legal guardian, prior to entering into the agency contract.

(3) **REQUIRED LANGUAGE.**—The disclosure document must contain, in close proximity to the signature of the student athlete, or, if the student athlete is under the age of 18, the signature of such student athlete’s parent or legal guardian, a conspicuous notice in boldface type stating: “Warning to Student Athlete: If you agree orally or in writing to be represented by an agent now or in the future you may lose your eligibility to compete as a student athlete in your sport. Within 72 hours after entering into this contract or before the next athletic

event in which you are eligible to participate, whichever occurs first, both you and the agent by whom you are agreeing to be represented must notify the athletic director of the educational institution at which you are enrolled, or other individual responsible for athletic programs at such educational institution, that you have entered into an agency contract.”

SEC. 4. ENFORCEMENT.

(a) **UNFAIR OR DECEPTIVE ACT OR PRACTICE.**—A violation of this Act shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(b) **ACTIONS BY THE COMMISSION.**—The Commission shall enforce this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act.

SEC. 5. ACTIONS BY STATES.

(a) **IN GENERAL.**—

(1) **CIVIL ACTIONS.**—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any athlete agent in a practice that violates section 3 of this Act, the State may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—

- (A) enjoin that practice;
- (B) enforce compliance with this Act; or
- (C) obtain damage, restitution, or other compensation on behalf of residents of the State.

(2) **NOTICE.**—

(A) **IN GENERAL.**—Before filing an action under paragraph (1), the attorney general of the State involved shall provide to the Commission—

- (i) written notice of that action; and
- (ii) a copy of the complaint for that action.

(B) **EXEMPTION.**—Subparagraph (A) shall not apply with respect to the filing of an action by an attorney general of a State under this subsection, if the attorney general determines that it is not feasible to provide the notice described in that subparagraph before filing of the action. In such case, the attorney general of a State shall provide notice and a copy of the complaint to the Commission at the same time as the attorney general files the action.

(b) **INTERVENTION.**—

(1) **IN GENERAL.**—On receiving notice under subsection (a)(2), the Commission shall have the right to intervene in the action that is the subject of the notice.

(2) **EFFECT OF INTERVENTION.**—If the Commission intervenes in an action under subsection (a), it shall have the right—

- (A) to be heard with respect to any matter that arises in that action; and
- (B) to file a petition for appeal.

(c) **CONSTRUCTION.**—For purposes of bringing any civil action under subsection (a), nothing in this title shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

- (1) conduct investigations;
- (2) administer oaths or affirmations; or
- (3) compel the attendance of witnesses or the production of documentary and other evidence.

(d) **ACTIONS BY THE COMMISSION.**—In any case in which an action is instituted by or on behalf of the Commission for a violation of section 3, no State may, during the pendency of that action, institute an action under subsection (a) against any defendant named in the complaint in that action.

(e) **VENUE.**—Any action brought under subsection (a) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

(f) **SERVICE OF PROCESS.**—In an action brought under subsection (a), process may be served in any district in which the defendant—

- (1) is an inhabitant; or
- (2) may be found.

SEC. 6. PROTECTION OF EDUCATIONAL INSTITUTION.

(a) **NOTICE REQUIRED.**—Within 72 hours after entering into an agency contract or before the next athletic event in which the student athlete may participate, whichever occurs first, the athlete agent and the student athlete shall each inform the athletic director of the educational institution at which the student athlete is enrolled, or other individual responsible for athletic programs at such educational institution, that the student athlete has entered into an agency contract, and the athlete agent shall provide the athletic director with notice in writing of such a contract.

(b) **CIVIL REMEDY.**—

(1) **IN GENERAL.**—An educational institution has a right of action against an athlete agent for damages caused by a violation of this Act.

(2) **DAMAGES.**—Damages of an educational institution may include and are limited to actual losses and expenses incurred because, as a result of the conduct of the athlete agent, the educational institution was injured by a violation of this Act 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 actions likely to be imposed by such an association or conference.

(3) **COSTS AND ATTORNEYS FEES.**—In an action taken under this section, the court may award to the prevailing party costs and reasonable attorneys fees.

(4) **EFFECT ON OTHER RIGHTS, REMEDIES AND DEFENSES.**—This section does not restrict the rights, remedies, or defenses of any person under law or equity.

SEC. 7. LIMITATION.

Nothing in this Act shall be construed to prohibit an individual from seeking any remedies available under existing Federal or State law or equity.

H. R. 361—5

SEC. 8. SENSE OF CONGRESS.

It is the sense of Congress that States should enact the Uniform Athlete Agents Act of 2000 drafted by the National Conference of Commissioners on Uniform State Laws, to protect student athletes and the integrity of amateur sports from unscrupulous sports agents. In particular, it is the sense of Congress that States should enact the provisions relating to the registration of sports agents, the required form of contract, the right of the student athlete to cancel an agency contract, the disclosure requirements relating to record maintenance, reporting, renewal, notice, warning, and security, and the provisions for reciprocity among the States.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

SPORTS AGENT RESPONSIBILITY AND TRUST ACT

MARCH 5, 2003.—Ordered to be printed

Mr. TAUZIN, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

[To accompany H.R. 361]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 361) to designate certain conduct by sports agents relating to the signing of contracts with student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission, having considered the same, report favorably thereon with amendment and recommend that the bill do pass.

CONTENTS

	Page
Purpose and Summary	1
Background and Need for Legislation	2
Hearings	2
Committee Consideration	3
Committee Votes	3
Committee Oversight Findings	3
Statement of General Performance Goals and Objectives	3
New Budget Authority, Entitlement Authority, and Tax Expenditures	3
Committee Cost Estimate	3
Congressional Budget Office Estimate	3
Federal Mandates Statement	5
Advisory Committee Statement	5
Constitutional Authority Statement	5
Applicability to Legislative Branch	5
Section-by-Section Analysis of the Legislation	5
Changes in Existing Law Made by the Bill, as Reported	7

PURPOSE AND SUMMARY

The purpose of H.R. 361 is to designate certain conduct by sports agents related to the signing of contracts to represent student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission (FTC). Additionally, H.R. 361 pro-

vides the states with the authority to bring civil action against violators in a district court and provides universities with a right of action against the athlete agent for damages resulting from a violation of the Act.

BACKGROUND AND NEED FOR LEGISLATION

The multimillion-dollar value of professional athlete salaries, signing bonuses, and endorsement contracts has resulted in a proliferation of unscrupulous practices by some sports agents. Unscrupulous agents, or their representatives, are willing to break the rules in order to sign promising student athletes to an agency contract. Agents are willing to do this because the fees that accompany the representation of a professional athlete are considerable, and the consequences that the agent will suffer in comparison to the athlete or school are limited or non-existent.

Motivated largely by financial gain, unscrupulous agents have gone to extreme measures to represent promising student athletes with even a remote chance of becoming a professional athlete. These agents, or their cohorts—often known as “runners”—will use tactics including secret payments to the athlete, undisclosed payments to the family or friends of the athlete who may be in a position to influence the athlete, unrealistic promises, and even pressuring the athlete. In some cases, these agents have made the secret payments to student athletes or their families, and then blackmailed them into signing a contract with the threat that they would disclose the infraction of collegiate rules and threaten the student athlete's eligibility. These egregious acts go unpunished due to the lack of a Federal law, disparate and sometime ineffective state laws, and the absence of any laws in many states.

The effect of a student athlete entering into an agency contract is generally a forfeiture of collegiate eligibility. The college or university may also be subject to various sanctions for violation of competition rules if contests were played with ineligible athletes. If this occurs, the economic impact to the school and the athlete can be substantial. Not only can a student athlete lose a scholarship, the university can be sanctioned with monetary penalties, loss of scholarships, forfeiture of contests, and loss of television revenue.

Currently there is no Federal law that directly addresses the actions of these agents. However, a majority of the states have a law to regulate athlete agents and/or their conduct, but to varying degree and specificity. Most recently the National Conference of Commissioners on Uniform State Laws passed the Uniform Athlete's Agent Act (UAAA) in 2000 to provide uniform state laws addressing the conduct and practices of athlete agents, including registration of agents. It has since been adopted by sixteen states and introduced in the legislatures of twelve others. Of the states that have not enacted the UAAA, 18 have existing athlete agent laws while sixteen have no law that directly addresses athlete agent conduct. H.R. 361 will provide remedies to protect student athletes and the educational institutions, particularly in those states with no existing law addressing athlete agent conduct.

HEARINGS

The Committee on Energy and Commerce has not held hearings on the legislation.

COMMITTEE CONSIDERATION

On Wednesday, January 29, 2003, the Full Committee on Energy and Commerce met in open markup session and ordered H.R. 361 favorably reported to the House, without amendment, by a voice vote, a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 361 reported. A motion by Mr. Tauzin to order H.R. 361 reported to the House, without amendment, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has not held oversight or legislative hearings on this legislation.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal of H.R. 361 is to define the prohibited conduct employed by individuals to entice or solicit student athletes to enter into an agency contract, whether it is a written or oral agreement, as well as require written disclosure to the student athlete prior to signing a contract and to the educational institution after a contract has been entered.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 361, the Sports Agent Responsibility and Trust Act, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, January 31, 2003.

Hon. W.J. "BILLY" TAUZIN,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 361, the Sports Agent Responsibility and Trust Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Ken Johnson (for federal costs), Victoria Heid Hall (for the state and local impact), and Paige Piper/Bach (for the private-sector impact).

Sincerely,

WILLIAM J. GAINER
(For Barry B. Anderson, Acting Director).

Enclosure.

H.R. 361—Sports Agent Responsibility and Trust Act

H.R. 361 would impose certain restrictions on contracts between sports agents and student athletes. For example, the bill would prohibit sports agents from soliciting such a contract by making false promises or offering gifts. These new rules would be enforced by the Federal Trade Commission (FTC) through civil penalties and by the states.

CBO estimates that enacting H.R. 361 would not have a significant impact on the federal budget. Based on information from the FTC, CBO expects that enforcement of the bill would occur mostly at the state level. Therefore, CBO expects that any increase in civil penalties resulting from the enactment of H.R. 361 would be insignificant. (Such penalties are recorded in the budget as revenues). Similarly, we estimate that implementing H.R. 361 would increase the FTC's costs by less than \$500,000 annually, assuming the availability of appropriated funds.

H.R. 361 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

H.R. 361 would impose private-sector mandates as defined by UMRA on certain sports agents and student athletes. The bill would prohibit a sports agent from providing anything of value to a student athlete or anyone associated with the athlete before entering into a contract. An agent also would be required to provide a student athlete with a specific disclosure document before entering into an agency contract and could not predate or postdate such a contract. The bill would require a student athlete, or the athlete's parents or legal guardian if the student is under the age of 18, to sign the disclosure document prior to entering into an agency contract. In addition, the bill would require the sports agent and student athlete to each inform the student's educational institution within a specific time frame that the athlete has entered into an agency contract. Based on information from government sources, CBO estimates that the direct cost of those mandates would fall well below the annual threshold established by UMRA for private-

sector mandates (\$117 million in 2003, adjusted annually for inflation).

The CBO staff contacts for this estimate are Ken Johnson (for federal costs), Victoria Heid Hall (for the state and local impact), and Paige Piper/Bach (for the private-sector impact). The estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 designates the legislation as the "Sports Agents Trust and Responsibility Act."

Section 2. Definitions

Section 2 provides definitions for terms incorporated throughout H.R. 361.

Section 3. Regulation of unfair and deceptive acts and practices in connection with the contact between an athlete agent and a student athlete

Section 3 provides for the regulation of conduct between an athlete agent and a student athlete. Subsection (a) defines prohibited conduct for an athlete agent to engage in order to solicit or recruit a student athlete to enter into an agency contract. The legislation makes it unlawful for the athlete agent to give materially false or misleading information, to make materially false promises or representations, or to provide anything of value to the student athlete or anyone associated with the student athlete before he or she signs an agency contract. Additionally, an athlete agent is prohibited from entering into an agency contract with the student athlete without providing the student the written disclosure proscribed by the Act and from either predating or postdating the contract.

Subsection (b) proscribes the terms of the disclosure requirements the athlete agent must provide to the student athlete, or to the student athlete's parent or guardian, and requires the signature of the student athlete, or the student athlete's parent or guardian, prior to entering into the agency contract.

Subsection (b)(3) provides the required language of the disclosure document.

Section 4. Enforcement

Section 4 authorizes the FTC to treat a violation of the Act as a violation of FTC rules defining an unfair and deceptive act or practice under section 18(a)(1)(B) of the FTC Act. This section authorizes the FTC to enforce the Act in the same manner and with the same powers and duties it has under the FTC Act.

Section 5. Actions by states

Section 5 provides the authority and parameters for a state to bring civil action against a violator of the Act. A state attorney general may bring civil action against any person in practice that violates any regulation of the Commission prescribed under section 3 of this Act in Federal district court in order to: (1) enjoin that practice; (2) enforce compliance with the regulation; (3) obtain damage, restitution, or other compensation; or (4) obtain other relief as the court may consider appropriate.

An attorney of the state filing an action under this Act must first provide a written notice of the action and a copy of the complaint to the FTC, unless it is not feasible in which case it must be provided to the FTC at the same time as the action is filed.

Subsection (b) provides the FTC with the authority to intervene in any action brought by a state under this Act. If the Commission intervenes, it maintains the right to be heard and the right to file a petition for appeal.

Subsection (c) provides that an action brought under subsection (a) by an attorney general shall not prevent the attorney general from exercising the powers provided by any other laws of the state.

Subsection (d) stipulates that no state may institute an action under subsection (a) while an action instituted by or on behalf of the Commission is pending.

Subsection (e) provides that an action brought by an attorney general of a state under subsection (a) may be brought in a district court of the United States that meets the venue requirements.

Subsection (f) provides the terms under which process may be served in an action brought under subsection (a).

Section 6. Protection of the educational institution

Section 6 provides safeguards and remedies for educational institutions.

Subsection (a) provides for written notification by the student athlete, and the athlete agent, to the athletic director or appropriate individual responsible for athletic programs of the educational institution. The notification that an agency contract has been entered into must be within 72 hours after entering into the contract or before the next athletic contest in which the student athlete may participate, whichever occurs first.

Subsection (b) provides an educational institution with civil remedy, including a right of action against an athlete agent for damages resulting from a violation of this Act.

Section 7. Sense of Congress

Section 7 expresses the sense of Congress that the States should enact the Uniform Athlete Agent Act of 2000 to protect student athletes and the integrity of amateur sports from unscrupulous sports agents.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation does not amend any existing Federal statute.

DOCUMENT NO. 16

108TH CONGRESS
1ST SESSION

S. 1170

To designate certain conduct by sports agents relating to the signing of contracts with student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission.

IN THE SENATE OF THE UNITED STATES

JUNE 3, 2003

Mr. WYDEN introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To designate certain conduct by sports agents relating to the signing of contracts with student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Sports Agent Respon-
5 sibility and Trust Act”.

6 **SEC. 2. DEFINITIONS.**

7 As used in this Act, the following definitions apply:

1 (1) AGENCY CONTRACT.—The term “agency
2 contract” means an oral or written agreement in
3 which a student athlete authorizes a person to nego-
4 tiate or solicit on behalf of the student athlete a pro-
5 fessional sports contract or an endorsement contract.

6 (2) ATHLETE AGENT.—The term “athlete
7 agent” means an individual who enters into an agen-
8 cy contract with a student athlete, or directly or in-
9 directly recruits or solicits a student athlete to enter
10 into an agency contract, and does not include a
11 spouse, parent, sibling, grandparent, or guardian of
12 such student athlete, any legal counsel for purposes
13 other than that of representative agency, or an indi-
14 vidual acting solely on behalf of a professional sports
15 team or professional sports organization.

16 (3) ATHLETIC DIRECTOR.—The term “athletic
17 director” means an individual responsible for admin-
18 istering the athletic program of an educational insti-
19 tution or, in the case that such program is adminis-
20 tered separately, the athletic program for male stu-
21 dents or the athletic program for female students, as
22 appropriate.

23 (4) COMMISSION.—The term “Commission”
24 means the Federal Trade Commission.

1 (5) ENDORSEMENT CONTRACT.—The term “en-
2 dorsement contract” means an agreement under
3 which a student athlete is employed or receives con-
4 sideration for the use by the other party of that in-
5 dividual’s person, name, image, or likeness in the
6 promotion of any product, service, or event.

7 (6) INTERCOLLEGIATE SPORT.—The term
8 “intercollegiate sport” means a sport played at the
9 collegiate level for which eligibility requirements for
10 participation by a student athlete are established by
11 a national association for the promotion or regula-
12 tion of college athletics.

13 (7) PROFESSIONAL SPORTS CONTRACT.—The
14 term “professional sports contract” means an agree-
15 ment under which an individual is employed, or
16 agrees to render services, as a player on a profes-
17 sional sports team, with a professional sports organi-
18 zation, or as a professional athlete.

19 (8) STATE.—The term “State” includes a State
20 of the United States, the District of Columbia, Puer-
21 to Rico, the United States Virgin Islands, or any
22 territory or insular possession subject to the jurisdic-
23 tion of the United States.

24 (9) STUDENT ATHLETE.—The term “student
25 athlete” means an individual who engages in, is eli-

1 gible to engage in, or may be eligible in the future
2 to engage in, any intercollegiate sport. An individual
3 who is permanently ineligible to participate in a par-
4 ticular intercollegiate sport is not a student athlete
5 for purposes of that sport.

6 **SEC. 3. REGULATION OF UNFAIR AND DECEPTIVE ACTS**
7 **AND PRACTICES IN CONNECTION WITH THE**
8 **CONTACT BETWEEN AN ATHLETE AGENT AND**
9 **A STUDENT ATHLETE.**

10 (a) **CONDUCT PROHIBITED.**—It is unlawful for an
11 athlete agent to—

12 (1) directly or indirectly recruit or solicit a stu-
13 dent athlete to enter into an agency contract, by—

14 (A) giving any false or misleading informa-
15 tion or making a false promise or representa-
16 tion; or

17 (B) providing anything of value to a stu-
18 dent athlete or anyone associated with the stu-
19 dent athlete before the student athlete enters
20 into an agency contract including any considera-
21 tion in the form of a loan, or acting in the ca-
22 pacity of a guarantor or co-guarantor for any
23 debt;

24 (2) enter into an agency contract with a stu-
25 dent athlete without providing the student athlete

1 with the disclosure document described in subsection
2 (b); or
3 (3) predate or postdate an agency contract.

4 (b) REQUIRED DISCLOSURE BY ATHLETE AGENTS
5 TO STUDENT ATHLETES.—

6 (1) IN GENERAL.—In conjunction with the en-
7 tering into of an agency contract, an athlete agent
8 shall provide to the student athlete, or, if the stu-
9 dent athlete is under the age of 18 to such student
10 athlete’s parent or legal guardian, a disclosure docu-
11 ment that meets the requirements of this subsection.
12 Such disclosure document is separate from and in
13 addition to any disclosure which may be required
14 under State law.

15 (2) SIGNATURE OF STUDENT ATHLETE.—The
16 disclosure document must be signed by the student
17 athlete, or, if the student athlete is under the age of
18 18 by such student athlete’s parent or legal guard-
19 ian, prior to entering into the agency contract.

20 (3) REQUIRED LANGUAGE.—The disclosure doc-
21 ument must contain, in close proximity to the signa-
22 ture of the student athlete, or, if the student athlete
23 is under the age of 18, the signature of such student
24 athlete’s parent or legal guardian, a conspicuous no-
25 tice in boldface type stating: “Warning to Student

1 Athlete: If you agree orally or in writing to be rep-
2 resented by an agent now or in the future you may
3 lose your eligibility to compete as a student athlete
4 in your sport. Within 72 hours after entering into
5 this contract or before the next athletic event in
6 which you are eligible to participate, whichever oc-
7 curs first, both you and the agent by whom you are
8 agreeing to be represented must notify the athletic
9 director of the educational institution at which you
10 are enrolled, or other individual responsible for ath-
11 letic programs at such educational institution, that
12 you have entered into an agency contract.”.

13 **SEC. 4. ENFORCEMENT.**

14 (a) UNFAIR OR DECEPTIVE ACT OR PRACTICE.—A
15 violation of this Act shall be treated as a violation of a
16 rule defining an unfair or deceptive act or practice pre-
17 scribed under section 18(a)(1)(B) of the Federal Trade
18 Commission Act (15 U.S.C. 57a(a)(1)(B)).

19 (b) ACTIONS BY THE COMMISSION.—The Commis-
20 sion shall enforce this Act in the same manner, by the
21 same means, and with the same jurisdiction, powers, and
22 duties as though all applicable terms and provisions of the
23 Federal Trade Commission Act (15 U.S.C. 41 et seq.)
24 were incorporated into and made a part of this Act.

1 **SEC. 5. ACTIONS BY STATES.**

2 (a) **IN GENERAL.**—

3 (1) **CIVIL ACTIONS.**—In any case in which the
4 attorney general of a State has reason to believe
5 that an interest of the residents of that State has
6 been or is threatened or adversely affected by the
7 engagement of any athlete agent in a practice that
8 violates section 3 of this Act, the State may bring
9 a civil action on behalf of the residents of the State
10 in a district court of the United States of appro-
11 priate jurisdiction to—

12 (A) enjoin that practice;

13 (B) enforce compliance with this Act; or

14 (C) obtain damage, restitution, or other
15 compensation on behalf of residents of the
16 State.

17 (2) **NOTICE.**—

18 (A) **IN GENERAL.**—Before filing an action
19 under paragraph (1), the attorney general of
20 the State involved shall provide to the Commis-
21 sion—

22 (i) written notice of that action; and

23 (ii) a copy of the complaint for that
24 action.

25 (B) **EXEMPTION.**—Subparagraph (A) shall
26 not apply with respect to the filing of an action

1 by an attorney general of a State under this
2 subsection, if the attorney general determines
3 that it is not feasible to provide the notice de-
4 scribed in that subparagraph before filing of the
5 action. In such case, the attorney general of a
6 State shall provide notice and a copy of the
7 complaint to the Commission at the same time
8 as the attorney general files the action.

9 (b) INTERVENTION.—

10 (1) IN GENERAL.—On receiving notice under
11 subsection (a)(2), the Commission shall have the
12 right to intervene in the action that is the subject
13 of the notice.

14 (2) EFFECT OF INTERVENTION.—If the Com-
15 mission intervenes in an action under subsection (a),
16 it shall have the right—

17 (A) to be heard with respect to any matter
18 that arises in that action; and

19 (B) to file a petition for appeal.

20 (c) CONSTRUCTION.—For purposes of bringing any
21 civil action under subsection (a), nothing in this title shall
22 be construed to prevent an attorney general of a State
23 from exercising the powers conferred on the attorney gen-
24 eral by the laws of that State to—

25 (1) conduct investigations;

1 (2) administer oaths or affirmations; or

2 (3) compel the attendance of witnesses or the
3 production of documentary and other evidence.

4 (d) ACTIONS BY THE COMMISSION.—In any case in
5 which an action is instituted by or on behalf of the Com-
6 mission for a violation of section 3, no State may, during
7 the pendency of that action, institute an action under sub-
8 section (a) against any defendant named in the complaint
9 in that action.

10 (e) VENUE.—Any action brought under subsection
11 (a) may be brought in the district court of the United
12 States that meets applicable requirements relating to
13 venue under section 1391 of title 28, United States Code.

14 (f) SERVICE OF PROCESS.—In an action brought
15 under subsection (a), process may be served in any district
16 in which the defendant—

17 (1) is an inhabitant; or

18 (2) may be found.

19 **SEC. 6. PROTECTION OF EDUCATIONAL INSTITUTION.**

20 (a) NOTICE REQUIRED.—Within 72 hours after en-
21 tering into an agency contract or before the next athletic
22 event in which the student athlete may participate, which-
23 ever occurs first, the athlete agent and the student athlete
24 shall each inform the athletic director of the educational
25 institution at which the student athlete is enrolled, or

1 other individual responsible for athletic programs at such
2 educational institution, that the student athlete has en-
3 tered into an agency contract, and the athlete agent shall
4 provide the athletic director with notice in writing of such
5 a contract.

6 (b) CIVIL REMEDY.—

7 (1) IN GENERAL.—An educational institution
8 has a right of action against an athlete agent for
9 damages caused by a violation of this Act.

10 (2) DAMAGES.—Damages of an educational in-
11 stitution may include and are limited to actual
12 losses and expenses incurred because, as a result of
13 the conduct of the athlete agent, the educational in-
14 stitution was injured by a violation of this Act or
15 was penalized, disqualified, or suspended from par-
16 ticipation in athletics by a national association for
17 the promotion and regulation of athletics, by an ath-
18 letic conference, or by reasonable self-imposed dis-
19 ciplinary action taken to mitigate actions likely to be
20 imposed by such an association or conference.

21 (3) COSTS AND ATTORNEYS FEES.—In an ac-
22 tion taken under this section, the court may award
23 to the prevailing party costs and reasonable attor-
24 neys fees.

1 (4) EFFECT ON OTHER RIGHTS, REMEDIES AND
2 DEFENSES.—This section does not restrict the
3 rights, remedies, or defenses of any person under
4 law or equity.

5 **SEC. 7. LIMITATION.**

6 Nothing in the Act shall be construed to prohibit an
7 individual from seeking any remedies available under ex-
8 isting State law or equity.

9 **SEC. 8. SENSE OF CONGRESS.**

10 It is the sense of Congress that States should enact
11 the Uniform Athlete Agents Act of 2000 drafted by the
12 National Conference of Commissioners on Uniform State
13 Laws, to protect student athletes and the integrity of ama-
14 teur sports from unscrupulous sports agents. In par-
15 ticular, it is the sense of Congress that States should enact
16 the provisions relating to the registration of sports agents,
17 the required form of contract, the right of the student ath-
18 lete to cancel an agency contract, the disclosure require-
19 ments relating to record maintenance, reporting, renewal,
20 notice, warning, and security, and the provisions for reci-
21 procity among the States.

○

DOCUMENT NO. 17

107TH CONGRESS
2D SESSION

H. R. 4701

To designate certain conduct by sports agents relating to the signing of contracts with student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission.

IN THE HOUSE OF REPRESENTATIVES

MAY 9, 2002

Mr. GORDON (for himself, Mr. OSBORNE, Mr. DINGELL, Mr. TOWNS, Mr. STEARNS, Mr. JOIN, and Mr. CLEMENT) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To designate certain conduct by sports agents relating to the signing of contracts with student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Sports Agent Respon-
5 sibility and Trust Act”.

6 **SEC. 2. DEFINITIONS.**

7 As used in this Act—

1 (1) the term “Commission” means the Federal
2 Trade Commission;

3 (2) the term “agent” means an individual who
4 enters into an agency contract with a student ath-
5 lete, or directly or indirectly recruits or solicits a
6 student athlete to enter into a contract, and does
7 not include a spouse, parent, sibling, grandparent, or
8 guardian of such student athlete, or an individual
9 acting solely on behalf of a professional sports team
10 or professional sports organization;

11 (3) the term “student athlete” means an indi-
12 vidual who engages in, is eligible to engage in, or
13 may be eligible in the future to engage in, any inter-
14 collegiate sport;

15 (4) the term “intercollegiate sport” means a
16 sport played at the collegiate level for which eligi-
17 bility requirements for participation by a student
18 athlete are established by a national association for
19 the promotion or regulation of college athletics;

20 (5) the term “athletic director” means an indi-
21 vidual responsible for administering the athletic pro-
22 gram of an educational institution or, in the case
23 that such program is administered separately, the
24 athletic program for male students or the athletic
25 program for female students, as appropriate;

1 (6) the term “agency contract” means an
2 agreement in which a student athlete authorizes an
3 agent to negotiate or solicit on behalf of the student
4 athlete a professional sports contract or an endorse-
5 ment contract;

6 (7) the term “endorsement contract” means an
7 agreement under which an individual is employed or
8 receives consideration for the use by the other party
9 of that individual’s person, name, image, or likeness
10 in the promotion of any product, service, or event;

11 (8) the term “professional sports contract”
12 means an agreement under which an individual is
13 employed, or agrees to render services, as a player
14 on a professional sports team, with a professional
15 sports organization, or as a professional athlete; and

16 (9) the term “State” means a State of the
17 United States, the District of Columbia, Puerto
18 Rico, the United States Virgin Islands, or any terri-
19 tory or insular possession subject to the jurisdiction
20 of the United States.

1 **SEC. 3. REGULATION OF UNFAIR AND DECEPTIVE ACTS**
2 **AND PRACTICES IN CONNECTION WITH THE**
3 **CONTACT BETWEEN A SPORTS AGENT AND A**
4 **STUDENT ATHLETE.**

5 (a) **CONDUCT PROHIBITED.**—It is unlawful for an
6 agent to—

7 (1) directly or indirectly recruit or solicit a stu-
8 dent athlete to enter into an agency contract, by—

9 (A) giving any false or misleading informa-
10 tion or making a false promise or representa-
11 tion; or

12 (B) providing anything of value to a stu-
13 dent athlete before the student athlete enters
14 into an agency contract;

15 (2) enter into an agency contract with a stu-
16 dent athlete without providing the student athlete
17 with the disclosure document described in subsection
18 (b); or

19 (3) predate or postdate an agency contract.

20 (b) **REQUIRED DISCLOSURE BY AGENTS TO STU-**
21 **DENT ATHLETES.**—

22 (1) **IN GENERAL.**— In conjunction with the
23 signing of an agency contract, an agent shall provide
24 to the student athlete a disclosure document that
25 meets the requirements of this subsection. Such dis-
26 closure document is separate from and in addition to

1 any disclosure which may be required under State
2 law.

3 (2) SIGNATURE OF STUDENT ATHLETE.—The
4 disclosure document must be signed by the student
5 athlete prior to the signing of the agency contract.

6 (3) REQUIRED LANGUAGE.—The disclosure doc-
7 ument must contain, in close proximity to the signa-
8 ture of the student athlete, a conspicuous notice in
9 boldface type in capital letters stating: “WARNING
10 TO STUDENT ATHLETE: IF YOU SIGN THIS
11 CONTRACT YOU MAY LOSE YOUR ELIGI-
12 BILITY TO COMPETE AS A STUDENT ATH-
13 LETE IN YOUR SPORT.”.

14 **SEC. 4. ENFORCEMENT.**

15 (a) UNFAIR OR DECEPTIVE ACT OR PRACTICE.—A
16 violation of this Act shall be treated as a violation of a
17 rule defining an unfair or deceptive act or practice pre-
18 scribed under section 18(a)(1)(B) of the Federal Trade
19 Commission Act (15 U.S.C. 57a(a)(1)(B)).

20 (b) ACTIONS BY THE COMMISSION.—The Commis-
21 sion shall enforce this Act in the same manner, by the
22 same means, and with the same jurisdiction, powers, and
23 duties as though all applicable terms and provisions of the
24 Federal Trade Commission Act (15 U.S.C. 41 et seq.)
25 were incorporated into and made a part of this Act.

1 **SEC. 5. ACTIONS BY STATES.**

2 (a) IN GENERAL.—

3 (1) CIVIL ACTIONS.—In any case in which the
4 attorney general of a State has reason to believe
5 that an interest of the residents of that State has
6 been or is threatened or adversely affected by the
7 engagement of any person in a practice that violates
8 section 3 of this Act, the State may bring a civil ac-
9 tion on behalf of the residents of the State in a dis-
10 trict court of the United States of appropriate juris-
11 diction to—

12 (A) enjoin that practice;

13 (B) enforce compliance with this Act;

14 (C) obtain damage, restitution, or other
15 compensation on behalf of residents of the
16 State; or

17 (D) obtain such other relief as the court
18 may consider to be appropriate.

19 (2) NOTICE.—

20 (A) IN GENERAL.—Before filing an action
21 under paragraph (1), the attorney general of
22 the State involved shall provide to the
23 Commission—

24 (i) written notice of that action; and

25 (ii) a copy of the complaint for that
26 action.

1 (B) EXEMPTION.—Subparagraph (A) shall
2 not apply with respect to the filing of an action
3 by an attorney general of a State under this
4 subsection, if the attorney general determines
5 that it is not feasible to provide the notice de-
6 scribed in that subparagraph before filing of the
7 action. In such case, the attorney general of a
8 State shall provide notice and a copy of the
9 complaint to the Commission at the same time
10 as the attorney general files the action.

11 (b) INTERVENTION.—

12 (1) IN GENERAL.—On receiving notice under
13 subsection (a)(2), the Commission shall have the
14 right to intervene in the action that is the subject
15 of the notice.

16 (2) EFFECT OF INTERVENTION.—If the Com-
17 mission intervenes in an action under subsection (a),
18 it shall have the right—

19 (A) to be heard with respect to any matter
20 that arises in that action; and

21 (B) to file a petition for appeal.

22 (c) CONSTRUCTION.—For purposes of bringing any
23 civil action under subsection (a), nothing in this title shall
24 be construed to prevent an attorney general of a State

1 from exercising the powers conferred on the attorney gen-
2 eral by the laws of that State to—

3 (1) conduct investigations;

4 (2) administer oaths or affirmations; or

5 (3) compel the attendance of witnesses or the
6 production of documentary and other evidence.

7 (d) **ACTIONS BY THE COMMISSION.**—In any case in
8 which an action is instituted by or on behalf of the Com-
9 mission for a violation of section 3, no State may, during
10 the pendency of that action, institute an action under sub-
11 section (a) against any defendant named in the complaint
12 in that action—

13 (c) **VENUE.**—Any action brought under subsection
14 (a) may be brought in the district court of the United
15 States that meets applicable requirements relating to
16 venue under section 1391 of title 28, United States Code.

17 (f) **SERVICE OF PROCESS.**—In an action brought
18 under subsection (a), process may be served in any district
19 in which the defendant—

20 (1) is an inhabitant; or

21 (2) may be found.

22 **SEC. 6. NOTICE TO EDUCATIONAL INSTITUTION.**

23 (a) **NOTICE REQUIRED.**—Within 72 hours after en-
24 tering into an agency contract or before the next athletic
25 event in which the student athlete may participate, which-

1 ever occurs first, the agent and the student athlete shall
2 each inform the athletic director of the educational institu-
3 tion at which the student athlete is enrolled, or other indi-
4 vidual responsible for athletic programs at such edu-
5 cational institution, that the student athlete has entered
6 into an agency contract, and the agent shall provide the
7 athletic director with notice in writing of such a contract.

8 (b) CIVIL REMEDY.—

9 (1) IN GENERAL.—An educational institution
10 has a right of action against an agent for damages
11 caused by such agent's failure to provide notice as
12 required in subsection (a).

13 (2) DAMAGES.—Damages of an educational in-
14 stitution may include losses and expenses incurred
15 because, as a result of the conduct of the agent, the
16 educational institution was injured by being penal-
17 ized, disqualified, or suspended from participation in
18 athletics by a national association for the promotion
19 and regulation of athletics, by an athletic conference,
20 or by reasonable self-imposed disciplinary action
21 taken to mitigate actions likely to be imposed by
22 such an association or conference.

23 (3) COSTS AND ATTORNEYS FEES.—In an ac-
24 tion taken under this section, the court may award

1 to the prevailing party costs and reasonable attor-
2 neys fees.

3 (4) LIABILITY.—Any liability of the agent or
4 the former student athlete under this section is sev-
5 eral and not joint.

6 (5) EFFECT ON OTHER RIGHTS, REMEDIES AND
7 DEFENSES.—This section does not restrict the
8 rights, remedies, or defenses of any person under
9 law or equity.

10 **SEC. 7. SENSE OF CONGRESS.**

11 It is the sense of Congress that States should enact
12 the Uniform Athlete Agents Act of 2000 drafted by the
13 National Conference of Commissioners on Uniform State
14 Laws, to protect student athletes and the integrity of ama-
15 teur sports from unscrupulous sports agents. In par-
16 ticular, it is the sense of Congress that States should enact
17 the provisions relating to the registration of sports agents,
18 the required form of contract, the right of the student ath-
19 lete to cancel an agency contract, the disclosure require-
20 ments relating to record maintenance, reporting, renewal,
21 notice, warning, and security, and the provisions for reci-
22 procity among the States.

○

DOCUMENT NO. 18

Union Calendar No. 453

107TH CONGRESS
2D SESSION

H. R. 4701

[Report No. 107-725]

A BILL

To designate certain conduct by sports agents relating to the signing of contracts with student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission.

OCTOBER 7, 2002

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

Union Calendar No. 453

107TH CONGRESS
2D SESSION

H. R. 4701

[Report No. 107-725]

To designate certain conduct by sports agents relating to the signing of contracts with student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission.

IN THE HOUSE OF REPRESENTATIVES

MAY 9, 2002

Mr. GORDON (for himself, Mr. OSBORNE, Mr. DINGELL, Mr. TOWNS, Mr. STEARNS, Mr. JOHN, and Mr. CLEMENT) introduced the following bill; which was referred to the Committee on Energy and Commerce

OCTOBER 7, 2002

Additional sponsors: Mr. HAYES, Mr. WAMP, Mr. FORD, Mr. BROWN of South Carolina, Mr. OTTER, Mr. CULBERSON, Mr. WILSON of South Carolina, Mr. THUNE, Mr. PETERSON of Minnesota, Mr. REHBERG, Mr. CRENSHAW, Mr. SCHROCK, Mr. CANTOR, Mr. GRAHAM, Mr. PENCE, Mr. DEMINT, Mr. BEREUTER, Mr. PUTNAM, Mr. MORAN of Kansas, Mr. KIND, Mr. LUCAS of Kentucky, Mr. BROWN of Ohio, Mr. SHIMKUS, Mr. TERRY, Mr. STRICKLAND, Mr. HORN, Mr. JEFF MILLER of Florida, Mr. FORBES, Mr. BOOZMAN, Mr. AKIN, Ms. CARSON of Indiana, Mr. JEFFERSON, Mr. DUNCAN, Mr. RUSH, Mr. UDALL of New Mexico, Mr. PLATTS, Mr. LAHOOD, Mr. SIMPSON, Mr. CARSON of Oklahoma, Mr. JENKINS, Mr. SULLIVAN, Mr. WATKINS, Mr. WATTS of Oklahoma, Mr. TIAHRT, Mr. SHERWOOD, Mr. HERGER, Mrs. CUBIN, Mrs. WILSON of New Mexico, Mr. GREEN of Wisconsin, Mr. RYAN of Wisconsin, Mrs. BIGGERT, Mr. WELLER, Mr. KIRK, Mrs. JO ANN DAVIS of Virginia, Mr. RAMSTAD, Mr. COBLE, Mr. KENNEDY of Rhode Island, Mr. HAYWORTH, Mrs. CAPPS, Mr. HOYER, Mr. HASTINGS of Washington, Mr. STENHOLM, Mr. ENGEL, Mr. PRICE of North Carolina, Mr. BALDACCI, Mr. LEACH, Mr. BACHUS, Mrs. MYRICK, Mr. ROYCE, Mr. REYNOLDS, Mrs. BONO, Mr. SHAYS, Mr. SHUSTER, Mr. MCKEON, Ms. NORTON, Mr. BURR of North Carolina, Mr. DOYLE, Mr. FLETCHER, Mr. BRYANT, Mr. UDALL of Colorado, Mr. BOSWELL, Mr. HILLEARY, Mr. SABO, Mr. TANNER, Mr. PAYNE, Mr. GRUCCI, Mr. WALSH, Mr. TOM DAVIS of Virginia, Mrs.

KELLY, Mr. PETERSON of Pennsylvania, Mr. UPTON, Mr. ROEMER, Mr. RANGEL, Mr. CLAY, Mr. WOLF, Mr. HOUGHTON, Mr. BOUCHER, Mr. ISRAEL, Mr. McDERMOTT, Mrs. MINK of Hawaii, Mr. SIMMONS, Ms. MCCARTHY of Missouri, Ms. DELAURO, Ms. RIVERS, Mr. SNYDER, Mrs. MEEK of Florida, Ms. ROS-LEHTINEN, Mr. ETHERIDGE, Mr. BAIRD, and Mr. HEFLEY

OCTOBER 7, 2002

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on May 9, 2002]

A BILL

To designate certain conduct by sports agents relating to the signing of contracts with student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Sports Agent Responsi-*
 5 *bility and Trust Act”.*

6 **SEC. 2. DEFINITIONS.**

7 *As used in this Act, the following definitions apply:*

8 (1) *AGENCY CONTRACT.*—*The term “agency con-*
 9 *tract” means an oral or written agreement in which*
 10 *a student athlete authorizes a person to negotiate or*
 11 *solicit on behalf of the student athlete a professional*
 12 *sports contract or an endorsement contract.*

1 (2) *ATHLETE AGENT.*—*The term “athlete agent”*
2 *means an individual who enters into an agency con-*
3 *tract with a student athlete, or directly or indirectly*
4 *recruits or solicits a student athlete to enter into an*
5 *agency contract, and does not include a spouse, par-*
6 *ent, sibling, grandparent, or guardian of such student*
7 *athlete, or an individual acting solely on behalf of a*
8 *professional sports team or professional sports organi-*
9 *zation.*

10 (3) *ATHLETIC DIRECTOR.*—*The term “athletic*
11 *director” means an individual responsible for admin-*
12 *istering the athletic program of an educational insti-*
13 *tution or, in the case that such program is adminis-*
14 *tered separately, the athletic program for male stu-*
15 *dents or the athletic program for female students, as*
16 *appropriate.*

17 (4) *COMMISSION.*—*The term “Commission”*
18 *means the Federal Trade Commission.*

19 (5) *ENDORSEMENT CONTRACT.*—*The term “en-*
20 *endorsement contract” means an agreement under*
21 *which a student athlete is employed or receives con-*
22 *sideration for the use by the other party of that indi-*
23 *vidual’s person, name, image, or likeness in the pro-*
24 *motion of any product, service, or event.*

1 (6) *INTERCOLLEGIATE SPORT.*—The term “inter-
2 collegiate sport” means a sport played at the colle-
3 giate level for which eligibility requirements for par-
4 ticipation by a student athlete are established by a
5 national association for the promotion or regulation
6 of college athletics.

7 (7) *PROFESSIONAL SPORTS CONTRACT.*—The
8 term “professional sports contract” means an agree-
9 ment under which an individual is employed, or
10 agrees to render services, as a player on a profes-
11 sional sports team, with a professional sports organi-
12 zation, or as a professional athlete.

13 (8) *STATE.*—The term “State” includes a State
14 of the United States, the District of Columbia, Puerto
15 Rico, the United States Virgin Islands, or any terri-
16 tory or insular possession subject to the jurisdiction
17 of the United States.

18 (9) *STUDENT ATHLETE.*—The term “student ath-
19 lete” means an individual who engages in, is eligible
20 to engage in, or may be eligible in the future to en-
21 gage in, any intercollegiate sport. An individual who
22 is permanently ineligible to participate in a par-
23 ticular intercollegiate sport is not a student athlete
24 for purposes of that sport.

1 **SEC. 3. REGULATION OF UNFAIR AND DECEPTIVE ACTS AND**
2 **PRACTICES IN CONNECTION WITH THE CON-**
3 **TACT BETWEEN AN ATHLETE AGENT AND A**
4 **STUDENT ATHLETE.**

5 (a) *CONDUCT PROHIBITED.—It is unlawful for an ath-*
6 *lete agent to—*

7 (1) *directly or indirectly recruit or solicit a stu-*
8 *dent athlete to enter into an agency contract, by—*

9 (A) *giving any false or misleading informa-*
10 *tion or making a false promise or representation;*
11 *or*

12 (B) *providing anything of value to a stu-*
13 *dent athlete or anyone associated with the stu-*
14 *dent athlete before the student athlete enters into*
15 *an agency contract;*

16 (2) *enter into an agency contract with a student*
17 *athlete without providing the student athlete with the*
18 *disclosure document described in subsection (b); or*

19 (3) *predate or postdate an agency contract.*

20 (b) *REQUIRED DISCLOSURE BY ATHLETE AGENTS TO*
21 *STUDENT ATHLETES.—*

22 (1) *IN GENERAL.— In conjunction with the en-*
23 *tering into of an agency contract, an athlete agent*
24 *shall provide to the student athlete, or, if the student*
25 *athlete is under the age of 18 to such student athlete's*
26 *parent or legal guardian, a disclosure document that*

1 meets the requirements of this subsection. Such disclo-
2 sure document is separate from and in addition to
3 any disclosure which may be required under State
4 law.

5 (2) *SIGNATURE OF STUDENT ATHLETE.*—The
6 disclosure document must be signed by the student
7 athlete, or, if the student athlete is under the age of
8 18 by such student athlete’s parent or legal guardian,
9 prior to entering into the agency contract.

10 (3) *REQUIRED LANGUAGE.*—The disclosure docu-
11 ment must contain, in close proximity to the signa-
12 ture of the student athlete, or, if the student athlete
13 is under the age of 18, the signature of such student
14 athlete’s parent or legal guardian, a conspicuous no-
15 tice in boldface type stating: **“Warning to Stu-**
16 **dent Athlete: If you agree orally or in**
17 **writing to be represented by an agent now**
18 **or in the future you may lose your eligi-**
19 **bility to compete as a student athlete in**
20 **your sport. Within 72 hours after entering**
21 **into this contract or before the next ath-**
22 **letic event in which you are eligible to**
23 **participate, whichever occurs first, both**
24 **you and the agent by whom you are agree-**
25 **ing to be represented must notify the ath-**

1 ***letic director of the educational institu-***
2 ***tion at which you are enrolled, or other***
3 ***individual responsible for athletic pro-***
4 ***grams at such educational institution,***
5 ***that you have entered into an agency con-***
6 ***tract.***”.

7 **SEC. 4. ENFORCEMENT.**

8 (a) *UNFAIR OR DECEPTIVE ACT OR PRACTICE.*—A vio-
9 *lation of this Act shall be treated as a violation of a rule*
10 *defining an unfair or deceptive act or practice prescribed*
11 *under section 18(a)(1)(B) of the Federal Trade Commission*
12 *Act (15 U.S.C. 57a(a)(1)(B)).*

13 (b) *ACTIONS BY THE COMMISSION.*—*The Commission*
14 *shall enforce this Act in the same manner, by the same*
15 *means, and with the same jurisdiction, powers, and duties*
16 *as though all applicable terms and provisions of the Federal*
17 *Trade Commission Act (15 U.S.C. 41 et seq.) were incor-*
18 *porated into and made a part of this Act.*

19 **SEC. 5. ACTIONS BY STATES.**

20 (a) *IN GENERAL.*—

21 (1) *CIVIL ACTIONS.*—*In any case in which the*
22 *attorney general of a State has reason to believe that*
23 *an interest of the residents of that State has been or*
24 *is threatened or adversely affected by the engagement*
25 *of any athlete agent in a practice that violates section*

1 3 of this Act, the State may bring a civil action on
2 behalf of the residents of the State in a district court
3 of the United States of appropriate jurisdiction to—

4 (A) enjoin that practice;

5 (B) enforce compliance with this Act;

6 (C) obtain damage, restitution, or other
7 compensation on behalf of residents of the State;
8 or

9 (D) obtain such other relief as the court
10 may consider to be appropriate.

11 (2) NOTICE.—

12 (A) IN GENERAL.—Before filing an action
13 under paragraph (1), the attorney general of the
14 State involved shall provide to the Commis-
15 sion—

16 (i) written notice of that action; and

17 (ii) a copy of the complaint for that
18 action.

19 (B) EXEMPTION.—Subparagraph (A) shall
20 not apply with respect to the filing of an action
21 by an attorney general of a State under this sub-
22 section, if the attorney general determines that it
23 is not feasible to provide the notice described in
24 that subparagraph before filing of the action. In
25 such case, the attorney general of a State shall

1 *provide notice and a copy of the complaint to the*
2 *Commission at the same time as the attorney*
3 *general files the action.*

4 **(b) INTERVENTION.—**

5 **(1) IN GENERAL.—***On receiving notice under*
6 *subsection (a)(2), the Commission shall have the right*
7 *to intervene in the action that is the subject of the no-*
8 *tice.*

9 **(2) EFFECT OF INTERVENTION.—***If the Commis-*
10 *sion intervenes in an action under subsection (a), it*
11 *shall have the right—*

12 **(A)** *to be heard with respect to any matter*
13 *that arises in that action; and*

14 **(B)** *to file a petition for appeal.*

15 **(c) CONSTRUCTION.—***For purposes of bringing any*
16 *civil action under subsection (a), nothing in this title shall*
17 *be construed to prevent an attorney general of a State from*
18 *exercising the powers conferred on the attorney general by*
19 *the laws of that State to—*

20 **(1)** *conduct investigations;*

21 **(2)** *administer oaths or affirmations; or*

22 **(3)** *compel the attendance of witnesses or the*
23 *production of documentary and other evidence.*

24 **(d) ACTIONS BY THE COMMISSION.—***In any case in*
25 *which an action is instituted by or on behalf of the Commis-*

1 sion for a violation of section 3, no State may, during the
2 pendency of that action, institute an action under sub-
3 section (a) against any defendant named in the complaint
4 in that action—

5 (e) *VENUE.*—Any action brought under subsection (a)
6 may be brought in the district court of the United States
7 that meets applicable requirements relating to venue under
8 section 1391 of title 28, United States Code.

9 (f) *SERVICE OF PROCESS.*—In an action brought
10 under subsection (a), process may be served in any district
11 in which the defendant—

12 (1) is an inhabitant; or

13 (2) may be found.

14 **SEC. 6. PROTECTION OF EDUCATIONAL INSTITUTION.**

15 (a) *NOTICE REQUIRED.*—Within 72 hours after enter-
16 ing into an agency contract or before the next athletic event
17 in which the student athlete may participate, whichever oc-
18 curs first, the athlete agent and the student athlete shall
19 each inform the athletic director of the educational institu-
20 tion at which the student athlete is enrolled, or other indi-
21 vidual responsible for athletic programs at such educational
22 institution, that the student athlete has entered into an
23 agency contract, and the athlete agent shall provide the ath-
24 letic director with notice in writing of such a contract.

25 (b) *CIVIL REMEDY.*—

1 (1) *IN GENERAL.*—An educational institution
2 has a right of action against an athlete agent for
3 damages caused by a violation of this Act.

4 (2) *DAMAGES.*—Damages of an educational in-
5 stitution may include losses and expenses incurred be-
6 cause, as a result of the conduct of the athlete agent,
7 the educational institution was injured by a violation
8 of this Act or was penalized, disqualified, or sus-
9 pended from participation in athletics by a national
10 association for the promotion and regulation of ath-
11 letics, by an athletic conference, or by reasonable self-
12 imposed disciplinary action taken to mitigate actions
13 likely to be imposed by such an association or con-
14 ference.

15 (3) *COSTS AND ATTORNEYS FEES.*—In an action
16 taken under this section, the court may award to the
17 prevailing party costs and reasonable attorneys fees.

18 (4) *EFFECT ON OTHER RIGHTS, REMEDIES AND*
19 *DEFENSES.*—This section does not restrict the rights,
20 remedies, or defenses of any person under law or eq-
21 uity.

22 **SEC. 7. SENSE OF CONGRESS.**

23 It is the sense of Congress that States should enact the
24 Uniform Athlete Agents Act of 2000 drafted by the National
25 Conference of Commissioners on Uniform State Laws, to

1 *protect student athletes and the integrity of amateur sports*
2 *from unscrupulous sports agents. In particular, it is the*
3 *sense of Congress that States should enact the provisions*
4 *relating to the registration of sports agents, the required*
5 *form of contract, the right of the student athlete to cancel*
6 *an agency contract, the disclosure requirements relating to*
7 *record maintenance, reporting, renewal, notice, warning,*
8 *and security, and the provisions for reciprocity among the*
9 *States.*

DOCUMENT NO. 19

107TH CONGRESS
2D SESSION

S. 3039

To designate certain conduct by sports agents relating to the signing of contracts with student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission.

IN THE SENATE OF THE UNITED STATES

OCTOBER 3, 2002

Mr. WYDEN introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To designate certain conduct by sports agents relating to the signing of contracts with student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Sports Agent Respon-
5 sibility and Trust Act”.

6 **SEC. 2. DEFINITIONS.**

7 As used in this Act, the following definitions apply:

1 (1) AGENCY CONTRACT.—The term “agency
2 contract” means an oral or written agreement in
3 which a student athlete authorizes a person to nego-
4 tiate or solicit on behalf of the student athlete a pro-
5 fessional sports contract or an endorsement contract.

6 (2) ATHLETE AGENT.—The term “athlete
7 agent” means an individual who enters into an agen-
8 cy contract with a student athlete, or directly or in-
9 directly recruits or solicits a student athlete to enter
10 into an agency contract, and does not include a
11 spouse, parent, sibling, grandparent, or guardian of
12 such student athlete, or an individual acting solely
13 on behalf of a professional sports team or profes-
14 sional sports organization.

15 (3) ATHLETIC DIRECTOR.—The term “athletic
16 director” means an individual responsible for admin-
17 istering the athletic program of an educational insti-
18 tution or, in the case that such program is adminis-
19 tered separately, the athletic program for male stu-
20 dents or the athletic program for female students, as
21 appropriate.

22 (4) COMMISSION.—The term “Commission”
23 means the Federal Trade Commission.

24 (5) ENDORSEMENT CONTRACT.—The term “en-
25 dorsement contract” means an agreement under

1 which a student athlete is employed or receives con-
2 sideration for the use by the other party of that in-
3 dividual's person, name, image, or likeness in the
4 promotion of any product, service, or event.

5 (6) INTERCOLLEGIATE SPORT.—The term
6 “intercollegiate sport” means a sport played at the
7 collegiate level for which eligibility requirements for
8 participation by a student athlete are established by
9 a national association for the promotion or regula-
10 tion of college athletics.

11 (7) PROFESSIONAL SPORTS CONTRACT.—The
12 term “professional sports contract” means an agree-
13 ment under which an individual is employed, or
14 agrees to render services, as a player on a profes-
15 sional sports team, with a professional sports organi-
16 zation, or as a professional athlete.

17 (8) STATE.—The term “State” includes a State
18 of the United States, the District of Columbia, Puer-
19 to Rico, the United States Virgin Islands, or any
20 territory or insular possession subject to the jurisdic-
21 tion of the United States.

22 (9) STUDENT ATHLETE.—The term “student
23 athlete” means an individual who engages in, is eli-
24 gible to engage in, or may be eligible in the future
25 to engage in, any intercollegiate sport. An individual

1 who is permanently ineligible to participate in a par-
2 ticular intercollegiate sport is not a student athlete
3 for purposes of that sport.

4 **SEC. 3. REGULATION OF UNFAIR AND DECEPTIVE ACTS**
5 **AND PRACTICES IN CONNECTION WITH THE**
6 **CONTACT BETWEEN AN ATHLETE AGENT AND**
7 **A STUDENT ATHLETE.**

8 (a) **CONDUCT PROHIBITED.**—It is unlawful for an
9 athlete agent to—

10 (1) directly or indirectly recruit or solicit a stu-
11 dent athlete to enter into an agency contract, by—

12 (A) giving any false or misleading informa-
13 tion or making a false promise or representa-
14 tion; or

15 (B) providing anything of value to a stu-
16 dent athlete or anyone associated with the stu-
17 dent athlete before the student athlete enters
18 into an agency contract;

19 (2) enter into an agency contract with a stu-
20 dent athlete without providing the student athlete
21 with the disclosure document described in subsection
22 (b); or

23 (3) predate or postdate an agency contract.

24 (b) **REQUIRED DISCLOSURE BY ATHLETE AGENTS**
25 **TO STUDENT ATHLETES.**—

1 (1) IN GENERAL.—In conjunction with the en-
2 tering into of an agency contract, an athlete agent
3 shall provide to the student athlete, or, if the stu-
4 dent athlete is under the age of 18 to such student
5 athlete’s parent or legal guardian, a disclosure docu-
6 ment that meets the requirements of this subsection.
7 Such disclosure document is separate from and in
8 addition to any disclosure which may be required
9 under State law.

10 (2) SIGNATURE OF STUDENT ATHLETE.—The
11 disclosure document must be signed by the student
12 athlete, or, if the student athlete is under the age of
13 18 by such student athlete’s parent or legal guard-
14 ian, prior to entering into the agency contract.

15 (3) REQUIRED LANGUAGE.—The disclosure docu-
16 ment must contain, in close proximity to the signa-
17 ture of the student athlete, or, if the student athlete
18 is under the age of 18, the signature of such student
19 athlete’s parent or legal guardian, a conspicuous no-
20 tice in boldface type stating: **“Warning to Stu-**
21 **dent Athlete: If you agree orally or in**
22 **writing to be represented by an agent**
23 **now or in the future you may lose your**
24 **eligibility to compete as a student athlete**
25 **in your sport. Within 72 hours after en-**

1 **tering into this contract or before the**
2 **next athletic event in which you are eligi-**
3 **ble to participate, whichever occurs first,**
4 **both you and the agent by whom you are**
5 **agreeing to be represented must notify**
6 **the athletic director of the educational**
7 **institution at which you are enrolled, or**
8 **other individual responsible for athletic**
9 **programs at such educational institution,**
10 **that you have entered into an agency**
11 **contract.”.**

12 **SEC. 4. ENFORCEMENT.**

13 (a) **UNFAIR OR DECEPTIVE ACT OR PRACTICE.—**A
14 violation of this Act shall be treated as a violation of a
15 rule defining an unfair or deceptive act or practice pre-
16 scribed under section 18(a)(1)(B) of the Federal Trade
17 Commission Act (15 U.S.C. 57a(a)(1)(B)).

18 (b) **ACTIONS BY THE COMMISSION.—**The Commis-
19 sion shall enforce this Act in the same manner, by the
20 same means, and with the same jurisdiction, powers, and
21 duties as though all applicable terms and provisions of the
22 Federal Trade Commission Act (15 U.S.C. 41 et seq.)
23 were incorporated into and made a part of this Act.

24 **SEC. 5. ACTIONS BY STATES.**

25 (a) **IN GENERAL.—**

1 (1) CIVIL ACTIONS.—In any case in which the
2 attorney general of a State has reason to believe
3 that an interest of the residents of that State has
4 been or is threatened or adversely affected by the
5 engagement of any athlete agent in a practice that
6 violates section 3 of this Act, the State may bring
7 a civil action on behalf of the residents of the State
8 in a district court of the United States of appro-
9 priate jurisdiction to—

10 (A) enjoin that practice;

11 (B) enforce compliance with this Act;

12 (C) obtain damage, restitution, or other
13 compensation on behalf of residents of the
14 State; or

15 (D) obtain such other relief as the court
16 may consider to be appropriate.

17 (2) NOTICE.—

18 (A) IN GENERAL.—Before filing an action
19 under paragraph (1), the attorney general of
20 the State involved shall provide to the Commis-
21 sion—

22 (i) written notice of that action; and

23 (ii) a copy of the complaint for that
24 action.

1 (B) EXEMPTION.—Subparagraph (A) shall
2 not apply with respect to the filing of an action
3 by an attorney general of a State under this
4 subsection, if the attorney general determines
5 that it is not feasible to provide the notice de-
6 scribed in that subparagraph before filing of the
7 action. In such case, the attorney general of a
8 State shall provide notice and a copy of the
9 complaint to the Commission at the same time
10 as the attorney general files the action.

11 (b) INTERVENTION.—

12 (1) IN GENERAL.—On receiving notice under
13 subsection (a)(2), the Commission shall have the
14 right to intervene in the action that is the subject
15 of the notice.

16 (2) EFFECT OF INTERVENTION.—If the Com-
17 mission intervenes in an action under subsection (a),
18 it shall have the right—

19 (A) to be heard with respect to any matter
20 that arises in that action; and

21 (B) to file a petition for appeal.

22 (c) CONSTRUCTION.—For purposes of bringing any
23 civil action under subsection (a), nothing in this title shall
24 be construed to prevent an attorney general of a State

1 from exercising the powers conferred on the attorney gen-
2 eral by the laws of that State to—

- 3 (1) conduct investigations;
4 (2) administer oaths or affirmations; or
5 (3) compel the attendance of witnesses or the
6 production of documentary and other evidence.

7 (d) ACTIONS BY THE COMMISSION.—In any case in
8 which an action is instituted by or on behalf of the Com-
9 mission for a violation of section 3, no State may, during
10 the pendency of that action, institute an action under sub-
11 section (a) against any defendant named in the complaint
12 in that action—

13 (e) VENUE.—Any action brought under subsection
14 (a) may be brought in the district court of the United
15 States that meets applicable requirements relating to
16 venue under section 1391 of title 28, United States Code.

17 (f) SERVICE OF PROCESS.—In an action brought
18 under subsection (a), process may be served in any district
19 in which the defendant—

- 20 (1) is an inhabitant; or
21 (2) may be found.

22 **SEC. 6. PROTECTION OF EDUCATIONAL INSTITUTION.**

23 (a) NOTICE REQUIRED.—Within 72 hours after en-
24 tering into an agency contract or before the next athletic
25 event in which the student athlete may participate, which-

1 ever occurs first, the athlete agent and the student athlete
2 shall each inform the athletic director of the educational
3 institution at which the student athlete is enrolled, or
4 other individual responsible for athletic programs at such
5 educational institution, that the student athlete has en-
6 tered into an agency contract, and the athlete agent shall
7 provide the athletic director with notice in writing of such
8 a contract.

9 (b) CIVIL REMEDY.—

10 (1) IN GENERAL.—An educational institution
11 has a right of action against an athlete agent for
12 damages caused by a violation of this Act.

13 (2) DAMAGES.—Damages of an educational in-
14 stitution may include losses and expenses incurred
15 because, as a result of the conduct of the athlete
16 agent, the educational institution was injured by a
17 violation of this Act or was penalized, disqualified,
18 or suspended from participation in athletics by a na-
19 tional association for the promotion and regulation
20 of athletics, by an athletic conference, or by reason-
21 able self-imposed disciplinary action taken to miti-
22 gate actions likely to be imposed by such an associa-
23 tion or conference.

24 (3) COSTS AND ATTORNEYS FEES.—In an ac-
25 tion taken under this section, the court may award

1 to the prevailing party costs and reasonable attor-
2 neys fees.

3 (4) EFFECT ON OTHER RIGHTS, REMEDIES AND
4 DEFENSES.—This section does not restrict the
5 rights, remedies, or defenses of any person under
6 law or equity.

7 **SEC. 7. SENSE OF CONGRESS.**

8 It is the sense of Congress that States should enact
9 the Uniform Athlete Agents Act of 2000 drafted by the
10 National Conference of Commissioners on Uniform State
11 Laws, to protect student athletes and the integrity of ama-
12 teur sports from unscrupulous sports agents. In par-
13 ticular, it is the sense of Congress that States should enact
14 the provisions relating to the registration of sports agents,
15 the required form of contract, the right of the student ath-
16 lete to cancel an agency contract, the disclosure require-
17 ments relating to record maintenance, reporting, renewal,
18 notice, warning, and security, and the provisions for reci-
19 procity among the States.

○

DOCUMENT NO. 20

SPORTS AGENT RESPONSIBILITY AND TRUST ACT

OCTOBER 7, 2002.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. TAUZIN, from the Committee on Energy and Commerce, submitted the following

R E P O R T

[To accompany H.R. 4701]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 4701) to designate certain conduct by sports agents relating to the signing of contracts with student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
Amendment	1
Purpose and Summary	4
Background and Need for Legislation	4
Hearings	5
Committee Consideration	5
Committee Votes	5
Committee Oversight Findings	6
Statement of General Performance Goals and Objectives	6
New Budget Authority, Entitlement Authority, and Tax Expenditures	6
Committee Cost Estimate	6
Congressional Budget Office Estimate	6
Federal Mandates Statement	7
Advisory Committee Statement	8
Constitutional Authority Statement	8
Applicability to Legislative Branch	8
Section-by-Section Analysis of the Legislation	8

AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Sports Agent Responsibility and Trust Act".

SEC. 2. DEFINITIONS.

As used in this Act, the following definitions apply:

(1) **AGENCY CONTRACT.**—The term "agency contract" means an oral or written agreement in which a student athlete authorizes a person to negotiate or solicit on behalf of the student athlete a professional sports contract or an endorsement contract.

(2) **ATHLETE AGENT.**—The term "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, and does not include a spouse, parent, sibling, grandparent, or guardian of such student athlete, or an individual acting solely on behalf of a professional sports team or professional sports organization.

(3) **ATHLETIC DIRECTOR.**—The term "athletic director" means an individual responsible for administering the athletic program of an educational institution or, in the case that such program is administered separately, the athletic program for male students or the athletic program for female students, as appropriate.

(4) **COMMISSION.**—The term "Commission" means the Federal Trade Commission.

(5) **ENDORSEMENT CONTRACT.**—The term "endorsement contract" means an agreement under which a student athlete is employed or receives consideration for the use by the other party of that individual's person, name, image, or likeness in the promotion of any product, service, or event.

(6) **INTERCOLLEGIATE SPORT.**—The term "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 college athletics.

(7) **PROFESSIONAL SPORTS CONTRACT.**—The term "professional sports 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.

(8) **STATE.**—The term "State" includes 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.

(9) **STUDENT ATHLETE.**—The term "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. An individual who is permanently ineligible to participate in a particular intercollegiate sport is not a student athlete for purposes of that sport.

SEC. 3. REGULATION OF UNFAIR AND DECEPTIVE ACTS AND PRACTICES IN CONNECTION WITH THE CONTACT BETWEEN AN ATHLETE AGENT AND A STUDENT ATHLETE.

(a) **CONDUCT PROHIBITED.**—It is unlawful for an athlete agent to—

(1) directly or indirectly recruit or solicit a student athlete to enter into an agency contract, by—

(A) giving any false or misleading information or making a false promise or representation; or

(B) providing anything of value to a student athlete or anyone associated with the student athlete before the student athlete enters into an agency contract;

(2) enter into an agency contract with a student athlete without providing the student athlete with the disclosure document described in subsection (b); or

(3) predate or postdate an agency contract.

(b) **REQUIRED DISCLOSURE BY ATHLETE AGENTS TO STUDENT ATHLETES.**—

(1) **IN GENERAL.**— In conjunction with the entering into of an agency contract, an athlete agent shall provide to the student athlete, or, if the student athlete is under the age of 18 to such student athlete's parent or legal guardian, a disclosure document that meets the requirements of this subsection. Such disclosure document is separate from and in addition to any disclosure which may be required under State law.

(2) **SIGNATURE OF STUDENT ATHLETE.**—The disclosure document must be signed by the student athlete, or, if the student athlete is under the age of 18 by such student athlete's parent or legal guardian, prior to entering into the agency contract.

(3) **REQUIRED LANGUAGE.**—The disclosure document must contain, in close proximity to the signature of the student athlete, or, if the student athlete is under the age of 18, the signature of such student athlete's parent or legal

guardian, a conspicuous notice in boldface type stating: "Warning to Student Athlete: If you agree orally or in writing to be represented by an agent now or in the future you may lose your eligibility to compete as a student athlete in your sport. Within 72 hours after entering into this contract or before the next athletic event in which you are eligible to participate, whichever occurs first, both you and the agent by whom you are agreeing to be represented must notify the athletic director of the educational institution at which you are enrolled, or other individual responsible for athletic programs at such educational institution, that you have entered into an agency contract."

SEC. 4. ENFORCEMENT.

(a) UNFAIR OR DECEPTIVE ACT OR PRACTICE.—A violation of this Act shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(b) ACTIONS BY THE COMMISSION.—The Commission shall enforce this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act.

SEC. 5. ACTIONS BY STATES.

(a) IN GENERAL.—

(1) CIVIL ACTIONS.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any athlete agent in a practice that violates section 3 of this Act, the State may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—

- (A) enjoin that practice;
- (B) enforce compliance with this Act;
- (C) obtain damage, restitution, or other compensation on behalf of residents of the State; or
- (D) obtain such other relief as the court may consider to be appropriate.

(2) NOTICE.—

(A) IN GENERAL.—Before filing an action under paragraph (1), the attorney general of the State involved shall provide to the Commission—

- (i) written notice of that action; and
- (ii) a copy of the complaint for that action.

(B) EXEMPTION.—Subparagraph (A) shall not apply with respect to the filing of an action by an attorney general of a State under this subsection, if the attorney general determines that it is not feasible to provide the notice described in that subparagraph before filing of the action. In such case, the attorney general of a State shall provide notice and a copy of the complaint to the Commission at the same time as the attorney general files the action.

(b) INTERVENTION.—

(1) IN GENERAL.—On receiving notice under subsection (a)(2), the Commission shall have the right to intervene in the action that is the subject of the notice.

(2) EFFECT OF INTERVENTION.—If the Commission intervenes in an action under subsection (a), it shall have the right—

- (A) to be heard with respect to any matter that arises in that action; and
- (B) to file a petition for appeal.

(c) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this title shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

- (1) conduct investigations;
- (2) administer oaths or affirmations; or
- (3) compel the attendance of witnesses or the production of documentary and other evidence.

(d) ACTIONS BY THE COMMISSION.—In any case in which an action is instituted by or on behalf of the Commission for a violation of section 3, no State may, during the pendency of that action, institute an action under subsection (a) against any defendant named in the complaint in that action—

(e) VENUE.—Any action brought under subsection (a) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

(f) SERVICE OF PROCESS.—In an action brought under subsection (a), process may be served in any district in which the defendant—

- (1) is an inhabitant; or
- (2) may be found.

SEC. 6. PROTECTION OF EDUCATIONAL INSTITUTION.

(a) **NOTICE REQUIRED.**—Within 72 hours after entering into an agency contract or before the next athletic event in which the student athlete may participate, whichever occurs first, the athlete agent and the student athlete shall each inform the athletic director of the educational institution at which the student athlete is enrolled, or other individual responsible for athletic programs at such educational institution, that the student athlete has entered into an agency contract, and the athlete agent shall provide the athletic director with notice in writing of such a contract.

(b) **CIVIL REMEDY.**—

(1) **IN GENERAL.**—An educational institution has a right of action against an athlete agent for damages caused by a violation of this Act.

(2) **DAMAGES.**—Damages of an educational institution may include losses and expenses incurred because, as a result of the conduct of the athlete agent, the educational institution was injured by a violation of this Act 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 actions likely to be imposed by such an association or conference.

(3) **COSTS AND ATTORNEYS FEES.**—In an action taken under this section, the court may award to the prevailing party costs and reasonable attorneys fees.

(4) **EFFECT ON OTHER RIGHTS, REMEDIES AND DEFENSES.**—This section does not restrict the rights, remedies, or defenses of any person under law or equity.

SEC. 7. SENSE OF CONGRESS.

It is the sense of Congress that States should enact the Uniform Athlete Agents Act of 2000 drafted by the National Conference of Commissioners on Uniform State Laws, to protect student athletes and the integrity of amateur sports from unscrupulous sports agents. In particular, it is the sense of Congress that States should enact the provisions relating to the registration of sports agents, the required form of contract, the right of the student athlete to cancel an agency contract, the disclosure requirements relating to record maintenance, reporting, renewal, notice, warning, and security, and the provisions for reciprocity among the States.

PURPOSE AND SUMMARY

The purpose of H.R. 4701 is to designate certain conduct by sports agents related to the signing of contracts to represent student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission (FTC). Additionally, H.R. 4701 provides the states with the authority to bring civil action against violators in a district court and provides universities with a right of action against the athlete agent for damages resulting from a violation of the Act.

BACKGROUND AND NEED FOR LEGISLATION

The multimillion-dollar value of professional athlete salaries, signing bonuses, and endorsement contracts has resulted in a proliferation of unscrupulous practices by some sports agents. Unscrupulous agents, or their representatives, are willing to break the rules in order to sign promising student athletes to an agency contract. Agents are willing to do this because the fees that accompany the representation of a professional athlete are considerable, and the consequences that the agent will suffer in comparison to the athlete or school are limited or non-existent.

Motivated largely by financial gain, unscrupulous agents have gone to extreme measures to represent promising student athletes with even a remote chance of becoming a professional athlete. These agents, or their cohorts—often known as “runners”—will use tactics including secret payments to the athlete, undisclosed pay-

ments to the family or friends of the athlete who may be in a position to influence the athlete, unrealistic promises, and even pressuring the athlete. In some cases, these agents have made the secret payments to student athletes or their families, and then blackmailed them into signing a contract with the threat that they would disclose the infraction of collegiate rules and threaten the student athlete's eligibility. These egregious acts go unpunished due to the lack of a Federal law, disparate and sometime ineffective state laws, and the absence of any laws in many states.

The effect of a student athlete entering into an agency contract is generally a forfeiture of collegiate eligibility. The college or university may also be subject to various sanctions for violation of competition rules if contests were played with ineligible athletes. If this occurs, the economic impact to the school and the athlete can be substantial. Not only can a student athlete lose a scholarship, the university can be sanctioned with monetary penalties, loss of scholarships, forfeiture of contests, and loss of television revenue.

Currently there is no Federal law that directly addresses the actions of these agents. However, a majority of the states have a law to regulate athlete agents and/or their conduct, but to varying degrees and specificity. Most recently the National Conference of Commissioners on Uniform State Laws passed the Uniform Athlete's Agent Act (UAAA) in 2000 to provide uniform state laws addressing the conduct and practices of athlete agents, including registration of agents. It has since been adopted by sixteen states and introduced in the legislatures of twelve others. Of the states that have not enacted the UAAA, 18 have existing athlete agent laws while sixteen have no law that directly addresses athlete agent conduct. H.R. 4701 will provide remedies to protect student athletes and the educational institutions, particularly in those states with no existing law addressing athlete agent conduct.

HEARINGS

The Subcommittee on Commerce, Trade, and Consumer Protection held a hearing on H.R. 4701 on June 5, 2002. The Subcommittee received testimony from: The Honorable Tom Osborne, U.S. House of Representatives; Mr. Howard Beales, Director, Bureau of Consumer Protection, Federal Trade Commission; Mr. James Donnelly, Athletic Director, Middle Tennessee State University; and Mr. Bill Saum, Director of Agent, Gambling, and Amateurism Activities, National Collegiate Athletic Association.

COMMITTEE CONSIDERATION

On Wednesday, July 17, 2002, the Subcommittee on Commerce, Trade, and Consumer Protection met in open markup session and approved H.R. 4701, as amended, for Full Committee consideration, by a voice vote, a quorum being present. On Wednesday, September 25, 2002, the Full Committee met in open markup session and ordered H.R. 4701 favorably reported to the House, as amended, by a voice vote, a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion

to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 4701 reported. A motion by Mr. Tauzin to order H.R. 4701 reported to the House, as amended, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a legislative hearing and made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal of H.R. 4701 is to define the prohibited conduct employed by individuals to entice or solicit student athletes to enter into an agency contract, whether it is a written or oral agreement, as well as require written disclosure to the student athlete prior to signing a contract and to the educational institution after a contract has been entered.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 4701, the Sports Agent Responsibility and Trust Act, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 4, 2002.

Hon. W.J. "BILLY" TAUZIN,
*Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4701, the Sports Agent Responsibility and Trust Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Ken Johnson (for federal costs), Angela Seitz (for the state and local impact), and Paige Piper/Bach (for the private-sector impact).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 4701—Sports Agent Responsibility and Trust Act

H.R. 4701 would impose certain restrictions on contracts between sports agents and student athletes. For example, the bill would prohibit sports agents from making false promises or offering gifts to solicit such a contract. These new rules would be enforced by the Federal Trade Commission (FTC) through civil penalties and by the states.

CBO estimates that enacting H.R. 4701 would not have a significant impact on the federal budget. Based on information from the FTC, CBO expects that enforcing H.R. 4701 would take place mostly at the state level. Therefore, CBO expects that any increase in civil penalties resulting from the enactment of H.R. 4701 would be insignificant. (Such penalties are recorded in the budget as revenues.) Similarly, we estimate that implementing H.R. 4701 would increase the FTC's costs by less than \$500,000 annually, assuming the availability of appropriations.

H.R. 4701 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

H.R. 4701 would impose private-sector mandates, as defined by UMRA, on certain sports agents and student athletes. CBO estimates that the direct costs of the mandates would fall well below the annual threshold established by UMRA for private-sector mandates (\$115 million in 2002, adjusted annually for inflation).

In general, H.R. 4701 would prohibit sports agents from recruiting or soliciting a student athlete by giving any false or misleading information or making a false promise or representation. H.R. 4701 would prohibit a sports agent from providing anything of value to a student athlete or anyone associated with the athlete before entering into a contract. An agent also would be required to provide a student athlete with a specific disclosure document before entering into an agency contract and could not predate or postdate such a contract. The bill also would require a student athlete, or the athlete's parents or legal guardian if the student is under the age of 18, to sign the disclosure document prior to entering into an agency contract. In addition, the bill would require the sports agent and student athlete to each inform the student's educational institution within a specific time that the athlete has entered into an agency contract. Based on information from government sources, CBO estimates that the direct cost of the mandates would fall well below the annual threshold established by UMRA for private-sector mandates.

The CBO staff contacts for this estimate are Ken Johnson (for federal costs), Angela Seitz (for the state and local impact), and Paige Piper/Bach (for the private-sector impact). The estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 designates the legislation as the “Sports Agents Trust and Responsibility Act of 2002.”

Section 2. Definitions

Section 2 provides definitions for terms incorporated throughout H.R. 4701.

Section 3. Regulation of unfair and deceptive acts and practices in connection with the contact between an athlete agent and a student athlete

Section 3 provides for the regulation of conduct between an athlete agent and a student athlete. Subsection (a) defines prohibited conduct for an athlete agent to engage in order to solicit or recruit a student athlete to enter into an agency contract. The legislation makes it unlawful for the athlete agent to give materially false or misleading information, to make materially false promises or representations, or to provide anything of value to the student athlete or anyone associated with the student athlete before he or she signs an agency contract. Additionally, an athlete agent is prohibited from entering into an agency contract with the student athlete without providing the student the written disclosure proscribed by the Act and from either predating or postdating the contract.

Subsection (b) proscribes the terms of the disclosure requirements the athlete agent must provide to the student athlete, or to the student athlete’s parent or guardian, and requires the signature of the student athlete, or the student athlete’s parent or guardian, prior to entering into the agency contract.

Subsection (b)(3) provides the required language of the disclosure document.

Section 4. Enforcement

Section 4 authorizes the FTC to treat a violation of the Act as a violation of FTC rules defining an unfair and deceptive act or practice under section 18(a)(1)(B) of the FTC Act. This section au-

thorizes the FTC to enforce the Act in the same manner and with the same powers and duties it has under the FTC Act.

Section 5. Actions by states

Section 5 provides the authority and parameters for a state to bring civil action against a violator of the Act. A state attorney general may bring civil action against any person in practice that violates any regulation of the Commission prescribed under section 3 of this Act in Federal district court in order to: (1) enjoin that practice; (2) enforce compliance with the regulation; (3) obtain damage, restitution, or other compensation; or (4) obtain other relief as the court may consider appropriate.

An attorney of the state filing an action under this Act must first provide a written notice of the action and a copy of the complaint to the FTC, unless it is not feasible in which case it must be provided to the FTC at the same time as the action is filed.

Subsection (b) provides the FTC with the authority to intervene in any action brought by a state under this Act. If the Commission intervenes, it maintains the right to be heard and the right to file a petition for appeal.

Subsection (c) provides that an action brought under subsection (a) by an attorney general shall not prevent the attorney general from exercising the powers provided by any other laws of the state.

Subsection (d) stipulates that no state may institute an action under subsection (a) while an action instituted by or on behalf of the Commission is pending.

Subsection (e) provides that an action brought by an attorney general of a state under subsection (a) may be brought in a district court of the United States that meets the venue requirements.

Subsection (f) provides the terms under which process may be served in an action brought under subsection (a).

Section 6. Protection of the educational institution

Section 6 provides safeguards and remedies for educational institutions.

Subsection (a) provides for written notification by the student athlete, and the athlete agent, to the athletic director or appropriate individual responsible for athletic programs of the educational institution. The notification that an agency contract has been entered into must be within 72 hours after entering into the contract or before the next athletic contest in which the student athlete may participate, whichever occurs first.

Subsection (b) provides an educational institution with civil remedy, including a right of action against an athlete agent for damages resulting from a violation of this Act.

Section 7. Sense of Congress

Section 7 expresses the sense of Congress that the States should enact the Uniform Athlete Agent Act of 2000 to protect student athletes and the integrity of amateur sports from unscrupulous sports agents.

DOCUMENT NO. 21

SPORTS AGENT RESPONSIBILITY AND TRUST ACT

HEARING
BEFORE THE
SUBCOMMITTEE ON
COMMERCE, TRADE, AND CONSUMER PROTECTION
OF THE
COMMITTEE ON ENERGY AND
COMMERCE
HOUSE OF REPRESENTATIVES
ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

ON

H.R. 4701

JUNE 5, 2002

Serial No. 107-125

Printed for the use of the Committee on Energy and Commerce



Available via the World Wide Web: <http://www.access.gpo.gov/congress/house>

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 2002

80-675PS

COMMITTEE ON ENERGY AND COMMERCE

W.J. "BILLY" TAUZIN, Louisiana, *Chairman*

MICHAEL BILIRAKIS, Florida	JOHN D. DINGELL, Michigan
JOE BARTON, Texas	HENRY A. WAXMAN, California
FRED UPTON, Michigan	EDWARD J. MARKEY, Massachusetts
CLIFF STEARNS, Florida	RALPH M. HALL, Texas
PAUL E. GILLMOR, Ohio	RICK BOUCHER, Virginia
JAMES C. GREENWOOD, Pennsylvania	EDOLPHUS TOWNS, New York
CHRISTOPHER COX, California	FRANK PALLONE, Jr., New Jersey
NATHAN DEAL, Georgia	SHERROD BROWN, Ohio
RICHARD BURR, North Carolina	BART GORDON, Tennessee
ED WHITFIELD, Kentucky	PETER DEUTSCH, Florida
GREG GANSKE, Iowa	BOBBY L. RUSH, Illinois
CHARLIE NORWOOD, Georgia	ANNA G. ESHOO, California
BARBARA CUBIN, Wyoming	BART STUPAK, Michigan
JOHN SHIMKUS, Illinois	ELIOT L. ENGEL, New York
HEATHER WILSON, New Mexico	TOM SAWYER, Ohio
JOHN B. SHADEGG, Arizona	ALBERT R. WYNN, Maryland
CHARLES "CHIP" PICKERING, Mississippi	GENE GREEN, Texas
VITO FOSSELLA, New York	KAREN McCARTHY, Missouri
ROY BLUNT, Missouri	TED STRICKLAND, Ohio
TOM DAVIS, Virginia	DIANA DEGETTE, Colorado
ED BRYANT, Tennessee	THOMAS M. BARRETT, Wisconsin
ROBERT L. EHRlich, Jr., Maryland	BILL LUTHER, Minnesota
STEVE BUYER, Indiana	LOIS CAPPs, California
GEORGE RADANOVICH, California	MICHAEL F. DOYLE, Pennsylvania
CHARLES F. BASS, New Hampshire	CHRISTOPHER JOHN, Louisiana
JOSEPH R. PITTS, Pennsylvania	JANE HARMAN, California
MARY BONO, California	
GREG WALDEN, Oregon	
LEE TERRY, Nebraska	
ERNIE FLETCHER, Kentucky	

DAVID V. MARVENTANO, *Staff Director*

JAMES D. BARNETTE, *General Counsel*

REID P.F. STUNTZ, *Minority Staff Director and Chief Counsel*

SUBCOMMITTEE ON COMMERCE, TRADE, AND CONSUMER PROTECTION

CLIFF STEARNS, Florida, *Chairman*

FRED UPTON, Michigan	EDOLPHUS TOWNS, New York
NATHAN DEAL, Georgia	DIANA DEGETTE, Colorado
<i>Vice Chairman</i>	LOIS CAPPs, California
ED WHITFIELD, Kentucky	MICHAEL F. DOYLE, Pennsylvania
BARBARA CUBIN, Wyoming	CHRISTOPHER JOHN, Louisiana
JOHN SHIMKUS, Illinois	JANE HARMAN, California
JOHN B. SHADEGG, Arizona	HENRY A. WAXMAN, California
ED BRYANT, Tennessee	EDWARD J. MARKEY, Massachusetts
GEORGE RADANOVICH, California	BART GORDON, Tennessee
CHARLES F. BASS, New Hampshire	PETER DEUTSCH, Florida
JOSEPH R. PITTS, Pennsylvania	BOBBY L. RUSH, Illinois
MARY BONO, California	ANNA G. ESHOO, California
GREG WALDEN, Oregon	JOHN D. DINGELL, Michigan,
LEE TERRY, Nebraska	(Ex Officio)
ERNIE FLETCHER, Kentucky	
W.J. "BILLY" TAUZIN, Louisiana	
(Ex Officio)	

(11)

CONTENTS

	Page
Testimony of:	
Beales, Howard, Director, Bureau of Consumer Protection, Federal Trade Commission	19
Donnelly, James F. "Boots," Athletic Director, Middle Tennessee State University	24
Osborne, Hon. Tom, a Representative in Congress from the State of Nebraska	6
Saum, William S., Director of Agent, Gambling and Amateurism Activities, National Collegiate Athletic Association	28

(III)

SPORTS AGENT RESPONSIBILITY AND TRUST ACT

WEDNESDAY, JUNE 5, 2002

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON COMMERCE, TRADE,
AND CONSUMER PROTECTION,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2322 Rayburn House Office Building, Hon. Cliff Stearns (chairman) presiding.

Members present: Representatives Stearns, Shadegg, Towns, DeGette, Capps, and Gordon.

Staff present: Brian McCullough, majority counsel; Ramsen Betfarhad, policy coordinator; and Will Carty, legislative clerk.

Mr. STEARNS. Good morning. The Subcommittee on Commerce, Trade, and Consumer Protection will convene.

We will receive now testimony on H.R. 4701, the Sports Agent Responsibility and Trust Act.

My good friend, the gentleman from Tennessee, Mr. Gordon, introduced the legislation to address problems associated with unscrupulous sports agents that use deceptive tactics to sign collegiate athletes to contracts. I am pleased to be a co-sponsor of the legislation, because I think H.R. 4701 addresses a very significant problem where the Federal Government can and should play a constructive role.

Sports agents provide a valuable service to their athlete clients. This legislation is not directed at the legitimate professionals who abide by the rules. This legislation is directed at those individuals who do not follow the rules and willingly jeopardize the careers of collegiate athletes and their school's program.

Today's witnesses include our colleague from Nebraska, who also co-sponsored H.R. 4701, Mr. Osborne from Nebraska. The distinguished former coach of the University of Nebraska's football team that won three national championships under his tenure can elaborate on the problems the legislation seeks to address.

I am also glad to see Mr. Saum from the NCAA has returned to discuss this issue that was briefly touched upon at our previous sports hearing. I am pleased to see that any differences of opinion have been resolved and that the NCAA is now supportive of the legislation.

Given the enormous contracts and signing bonuses of today's elite professional athletes, it is not surprising that an element of society will do anything to court promising collegiate athletes with

the hope of being their agent and riding their coattails to future riches.

Talented collegiate athletes that hold even the slightest promise of professional stardom are targeted by these individuals. Unfortunately, odds are against most collegiate athletes reaching the professional ranks and the accompanying fame and fortune.

Instead, what is left in the wake of some of the purported agents' activities are all too often athletes who have lost their collegiate eligibility and the schools left to deal with possible violations. And let us be clear: the consequences for the athlete and the school can be serious and have lasting effect.

Sanctions for violations can include the return of post-season appearance money, forfeiture of games played with ineligible athletes, loss of scholarships, and ban on televised games. These are the rules and the penalties the schools have imposed upon themselves, and I understand why they exist. Yet despite the stiff penalties for the school and the athlete, the repercussions for the perpetrator range from minimal to nonexistence.

Because the States recognize this problem, many have enacted laws to curb the abuses. Unfortunately, the patchwork of varying laws is not currently sufficient to deal with this problem. While progress is being made by many States to enact the Uniform Athlete Agent Act, it can only be a true countermeasure once all the States have enacted it.

Currently, only 16 States—my home State of Florida is included—have taken that step. And while another 12 States have introduced the legislation, over a dozen States remain without any law to address this problem.

H.R. 4701 will provide an additional remedy for the States that already have an existing athlete agent law. More significantly, it will provide a new enforcement mechanism at the Federal and State level where none currently exists. State attorneys general are given the authority to bring civil action in Federal district court.

The FTC has all its available powers and authority to bring action against a violator under the legislation, including the ability to fine a violator up to the maximum of \$11,000 per violation per day and to seek restitution to the injured.

It is clear that Federal legislation is required in order to provide the State attorneys general with the authority to bring action under a Federal statute. My colleagues, what is not clear to me entirely is whether the Federal Trade Commission requires legislation to enunciate certain conduct as unfair, deceptive, or if its existing authority under Section 5 already accords it the necessary authority to bring action against violators.

So I look forward to comments of our witnesses today and thank them for their participation.

With that, my distinguished colleague from New York, the ranking member, Mr. Towns.

Mr. TOWNS. Thank you very much, Mr. Chairman, and I would also like to thank you for holding this hearing. As an original co-sponsor of the bill, I am very pleased that, in our previous sports hearings, my friend from Tennessee, Bart Gordon, was able to push this piece of legislation forward. I have heard of the horror stories out there and realize that something needs to be done.

This legislation is a significant step in the right direction. It not only protects young people, who seemingly need representation at a younger age every day, but also ensures that bad actors in the sports agent business are held accountable when they illegally solicit those whom they hope to one day represent. The bill would create a Better Business Bureau for agents, through which amateur athletes and their families could file complaints and gain recompense from those who do harm to their careers.

I would like to make it clear not all sports agents are bad actors, and I hope that those agents who play by the rules and who represent their clients ethically will come forward and support this legislation. I also hope that all of my colleagues support this bill, and that we can mark this bill up for consideration by the full committee as early as possible.

Let us face it, something has to be done, and it has to be done now.

I yield back the balance of my time, and I look forward to hearing from the witnesses and, from of course, my colleague, Mr. Osborne, who has been very, very involved in these issues throughout the years. On that note, I yield back.

Mr. STEARNS. I thank the gentleman, and now we will recognize the author of the bill, Mr. Gordon from Tennessee.

Mr. GORDON. Thank you, Mr. Chairman, and also thank you very much for not only co-sponsoring but for giving this a prompt hearing. You certainly have been cooperative, and I do appreciate that.

Our hearing today, as our chairman said, is on H.R. 4701, the Sports Agent Responsibility and Trust Act, or SPARTA. I appreciate the support of so many folks here that have made this possible.

First, I want to take a moment to introduce one of the witnesses that we have today. He is a friend of mine from my district and also my alma mater. Coach Boots Donnelly is our former successful football coach at MTSU and now our athletic director, and I appreciate Coach Donnelly taking the time to come up here and being part of this and bringing some real-world advice and information to this hearing.

I also want to thank my distinguished colleague, Representative Tom Osborne from Nebraska, for his support in putting this legislation together. I have been working on the problem of predatory sports agents since 1996 when a friend and constituent of mine, Coach Ken Ship, came to see me about the need for uniform Federal law to protect kids from unscrupulous sports agents.

The agent problem has only grown worse since 1996. With professional signing bonuses in the millions, it has become open season on our young men and women. Agents hoping to cash in on the next NFL or WNBA or NBA star will promise anything to student athletes with even a remote chance of playing professional sports to get them to end their college careers and sign with them so they can get a piece of the potential windfall.

Agents offer athletes cash, cars, cell phones. They pay runners to curry favor with star athletes. They give free trips to their friends and offer jobs to their family members, who are in a position to influence the athlete. They harass them by telephone, stalk them at hotels and dorm lobbies. Coaches from the University of

Tennessee tell me that when they have to—or when they have bowl games, they have to post guards to keep the sports agents away from their players.

Agents know it is against NCAA rules for kids to sign with an agent while they are still eligible to play college sports. It is also against NCAA rules and many State laws for them to offer anything of value to a student athlete. Yet agents continue to aggressively pursue student athletes with little regard for their future or the school's athletic program.

And why? Under the current rules, when an agent crosses the lines and gives gifts or money to a student athlete, the only person who is not held accountable is the sports agent. The student athlete loses his or her scholarship. The university faces fines and sanctions. The agent generally faces no consequences from the damage they cause.

If it is illegal in the student's home State, it is easy enough to contact the student athlete when they are on the road. When sports agents give money and gifts to student athletes, it threatens the athlete's educational experience and the integrity of the amateur athletes.

I introduced the Sports Agent Responsibility and Trust Act with Representative Osborne to shift the burden of responsibility and hold sports agents accountable for their behavior. SPARTA would make it unfair—it would make it an unfair and deceptive business practice for sports agents to give anything of value to student athletes in order to entice them into signing an agency contract.

The bill would also prohibit agents from giving false or misleading information to athletes and from failing to tell athletes in writing that they may lose their NCAA eligibility if they sign a contract. The bill would cover not only agents but also runners and other individuals connected to the agents.

The bill deputizes State attorney generals to prosecute violators in Federal district court on behalf of the FTC with fines of \$11,000 per offense per day the violation continues. Finally, the bill requires sports agents to immediately notify a student athlete's school in writing when an athlete signs an agency contract, so that the athlete is not unknowingly played in a game and subjecting the school to sanctions and disqualifications.

Schools will be given their right to pursue civil remedies if they are harmed by illegal recruiting activities of the sports agent. The pressures on student athletes and colleges are tremendous. I believe we have a responsibility to educating our student athlete and protecting them from the unscrupulous sports agents whose bottom line is their own financial gain.

Our student athletes need to make good, informed decisions about their future. This legislation will send a loud signal to bad apple agents that they will be held accountable for unethical recruiting practices. The bill is supported by the NCAA and a growing list of coaches and athletic directors across the nation.

So once again, thank you, Mr. Chairman, for bringing this bill to a prompt hearing.

Mr. STEARNS. I thank my colleague.

Unfortunately, we have a vote, and then there will be a picture on the House floor. So I appreciate your indulgence and patience.

We are going to reconvene the committee after we have this picture and this vote. So the subcommittee will recess.

[Brief recess.]

Mr. STEARNS. The subcommittee will reconvene.

We had our opening statements.

[Additional statements submitted for the record follow:]

PREPARED STATEMENT OF HON. GEORGE RADANOVICH, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, thank you for holding this hearing today to discuss H.R. 4701 and the associated problems that give rise to the need for Federal legislation.

Today, we will here testimony regarding sports agents using **fraudulent** and deceptive conduct to sign collegiate student athletes to a professional sports contract. As the salaries of our professional athletes have magnified over the years, the number of deceitful sports agents has also multiplied. These worthless agents have often broken the rules and suffered little or no consequence compared to the athlete and the school. Many of these violations have led to schools bearing the large financial impacts.

These agents, who only care about money, are willing to do whatever it takes to represent any student-athlete who has even a slim chance of playing professional sports in order to acquire the enormous fees that accompany the representation of professional athletes. It is time to end all of the secret payments and gifts that are given to athletes, friends or relatives who have the ability to influence the athlete.

In the end, I hope we can work together to forge bipartisan legislation that will build on our Committees' recent progress and result in continued improvements in our collegiate athletics.

Thank you, Mr. Chairman, for holding this hearing today. I look forward to the witnesses' testimony.

PREPARED STATEMENT OF HON. W.J. "BILLY" TAUZIN, CHAIRMAN, COMMITTEE ON
ENERGY AND COMMERCE

Thank you Chairman Stearns for holding this legislative hearing this morning. And let me also to take a moment to thank the sponsor of this bill, Mr. Bart Gordon, of Tennessee, for being concerned enough about our young collegiate athletes to pursue a legislative remedy. I know this has been a longstanding concern of his and I share the concern that young athletes are too often preyed upon by unscrupulous sports agents.

With the amount of television exposure of college athletics, we sometimes forget that these young athletes are just that—young and often naive, without the benefit of the wisdom and experience that comes with age. Unfortunately, a few of these so-called sports agents—vultures really—know this fact well, and will exploit it for their own personal gain with little regard for the athlete. Sign a young collegiate star who makes it big as a professional and the windfall to the agent is tremendous.

Fortunately, we can set rules of fair play and set penalties for those who choose to break them. I know that many states, including Louisiana, already have laws to address the conduct of sports agents. I am also aware that a uniform state law has been enacted by a number of states and is moving through several other state legislatures. So there has been some recognition at the state level that there is a problem and some attempts have been made to address it.

The questions I have this morning relate to why current laws are insufficient. Is it a matter of states enforcing the laws they have? Or is the system only as strong as its weakest link? Why have some states never enacted a law to address sports agents?

Given that some states have yet to enact a law or move the uniform state act, it appears the state efforts will be a lengthy process. It seems logical that the Federal government could play a role that would provide a remedy and deterrent where none currently exists.

That being said, human nature is susceptible to greed and we cannot change the fact that some people will do anything for the lure of a quick dollar—or in the case of multimillion-dollar sports contracts, quite a few quick dollars. For that reason alone, I think it will require tremendous effort and vigilance to minimize current abuses under *any* regulatory environment.

I am very interested in hearing answers to my questions and look forward to a discussion of these issues.

Thank you, Mr. Chairman, and I yield back my remaining time.

Mr. STEARNS. We will welcome Coach Osborne, the Congressman from the 3rd District of Nebraska, and appreciate his attendance, and we look forward to your testimony. Thank you.

**STATEMENT OF HON. TOM OSBORNE, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF NEBRASKA**

Mr. OSBORNE. Thank you, Mr. Chairman, and appreciate Mr. Gordon's work on this bill, his attendance.

Mr. Terry, good to have you here today.

And I am a co-sponsor of H.R. 4701, the SPARTA Act. Mr. Gordon really took the lead on it, and I guess the only thing I bring to the table is maybe a little bit of firsthand experience with what goes on out there.

And, you know, things have changed a lot. In 1961, I played here in this town with a guy who was a first round draft pick. He was the No. 1 of all No. 1s, and his total salary that year was about \$16,000. And today the No. 1 pick would probably be more like \$16 million.

Nobody at that time had an agent. A lot of all pros played for \$10,000 or \$12,000 a year. So as the money escalated, the interest in making off of players and agents began to proliferate. So today an agent can make several thousand dollars or maybe several hundred thousand dollars or even a million for very little work. And so it has really changed things.

Ed Garvey, who used to be the head of the Players Association, at one time made a stab at regulating the thing a little bit by, at the University of Wisconsin Law School where he was a faculty member, said that they were going to set up a training course, which they did, and you had to have some qualifications to pass the course. You had to know something about contracts. You had to have some expertise.

And what it advocated was an hourly wage. And, you know, you can hire a pretty good attorney for \$300 or \$400 an hour, and most people wouldn't have to pay more than \$5,000 or \$10,000, even a first round pick, at an hourly rate. But that isn't the way most of these guys operate, so they are making hundreds of thousands off of the top picks.

There are some effective sports agents, and I think it is important we say that up front. They are well trained. They are registered. Many of them are attorneys. They follow NCAA rules and State and Federal laws, and I think they perform a service. I was never crazy about the profession, but I do recognize that there are some good people out there.

The main problem that we are facing is that in 2002 the NFL Players Association said that they had 1,196 registered agents. And the thing about it, these are people who are qualified to negotiate a contract for somebody in the NFL. The problem is that of those 1,196, more than 800 did not have a client, and there are several hundred more out there who are not registered.

So you can represent a player coming out of college and not be registered with the National Football League Players Association. All you have to do to be an agent is say you are one. And so we have guys who have no training, don't even have a college degree,

who are telling guys that they can handle their contracts, do their taxes, handle all of their public relations, and, you know, they have no training in any of these issues.

A marginal agent can't compete. Obviously, when you have got that proliferation of people out there, a guy who has no expertise, who has no training, is not going to be able to wait until the young man or young man has graduated from college and do things the right way. So the only chance they have is to approach a lot of these young people while they are still in school, while they still have eligibility remaining.

And so they will use a variety of tactics. One is simply trying to beat the door down, and so most of our better players in Nebraska ended up having to get unlisted numbers in their junior and senior years, mainly because of agents. The agents were so numerous and calling them every night that they just finally decided they couldn't handle it anymore. So that is one of the things that happened.

And I remember one time getting ready to go to a bowl game down in the Orange Bowl, and we were getting ready to get on the bus and I couldn't find my quarterback and found him in the lobby of the hotel between two agents who were browbeating him 2 hours before the kickoff.

Well, that didn't set real well with me. And, of course, I mean, it was sort of a deal where they just grabbed him coming off the elevator, and he didn't want to be discourteous, and so he sat down. But that type of thing does happen.

Sometimes they sign a player to a contract before eligibility expires, and they often times will ask—or will add an inducement such as some cash, cars, clothes. We had one player who was taken out to Los Angeles and met some Hollywood stars, and he was told there was nothing illegal about the trip.

And, of course, when he took the trip he became ineligible, and that player suffered an injury and subsequently never did play for us, but he would not have been eligible anyway. And he met Patti LaBelle and some people, and it really, you know, turned his head a little bit.

So, anyway, that was—that is something that sometimes happened. And the problem is that when a player takes something early, such as cash or cars or clothes, or whatever, to some degree he belongs to that agent, because the agent can then say, "Well, listen, if you don't go along with me, if you don't cooperate, I am going to blow the whistle on you, and you are going to lose your eligibility, and your school is going to get in trouble, and your school is going to have to forfeit some games." The school may not have to forfeit, but that is often said.

And so, as a result, the agent becomes a more dominant person in that player's life than the coach does. And to some degree, the agent owns the player. And he may have inadvertently gotten into it, but once he is into it it is pretty tough.

Sometimes there is misrepresentation. On a couple of occasions we had young men who had been former players who showed up, maybe after 10 years, and we hadn't seem him for a while, and they seemed to be very interested in the program. And they would hang around and befriend the players, and the first thing we would know they were runners. They are working for an agent, and they

try to sort of infiltrate the program. And because of their previous player status, they were certainly welcomed back, because nobody knew what they were doing.

And so some of that happened, and we had one or two unfortunate incidents where players got involved, in some cases not even knowing for sure what they were getting involved with because of the runner situation.

The other thing that is particularly insidious about the agent business is they many times will misrepresent what they can deliver, and the most common ploy at the present time is to assure a player that the agent somehow will get him drafted higher.

And so, in recent years, Nebraska had a couple of players who were very good players, and there is a committee in the National Football League that you can call that consists of player personnel people, and they can give you a pretty good idea of whether you are going to be drafted early—I mean, before the draft ever occurs.

And so for one of these young men I called that committee, and I put the young man on the phone with the chairman of the committee, and the committee told him that he would be drafted in the third round. And he was a junior, and so, you know, we said, "Well, you do what you have got to do. But, you know, you stick around; there is a pretty good chance you are going to be first round pick next year." And the difference between a third round pick and a first round pick is probably \$800,000 for a third round pick and \$6-, \$7-, \$8 million average for a first round. Well, you know, usually that is worth a year's wait.

But the young man was told—and I think his family was told—that that was a lot of malarkey. They were just trying to keep him around and that he was going to be a first round pick. Well, the draft came, and he was third round pick. And there was a lot of consternation, some folks, you know, that were really unhappy, and they said that the coaching staff had badmouthed the player. Nobody had done anything like that.

So sometimes when the player—when the agent makes that kind of a promise, and then it doesn't come true, then he will point the finger at others. But anyway, that is something that is very commonly done at the present time, and many times it results in a player coming out early who shouldn't come out.

And each year there are some players who actually declare for the draft, lose their eligibility, and then aren't drafted at all. So they lose their education, they lose dollars, and all of this, of course, works against the school and the player.

And then, of course, sometimes there is folks who are pre-dating and post-dating contracts. We had a player, two players actually, who were contacted at their home in the summer, quite a distance from Nebraska, and were convinced that they should sign contracts that would be post-dated.

They did so, and then, as we were down at a bowl game, that same agent was harassing those guys all week telling them that if they didn't honor that contract that he was going to blow the whistle on them. And so their mind was not on the football game, and I didn't find out about it until months later. But they didn't have their best game, and we were playing for the national champion-

ship. So that is one reason I am not real thrilled about some agents, not all, but some.

So let me conclude by saying this. I think the legislation is needed because there are currently 17 States that have no regulation of sports agents, and I think Mr. Gordon and I both agree that we are not trying to supersede State law. We would like to see every State with regulation, but right now we have a hodgepodge.

Some States cover this; some cover that. Seventeen have no regulation. And most of these guys, these agents, operate across State lines. And so you had Norby Walters, Lloyd Bloom, who went to prison, Tank Black recently, and they had multiple people that were involved illegally across many different lines.

So what this does, it provides a uniform Federal backstop, which we think will serve athletes well. It serves the schools well, and it allows the States, and the schools particularly, to go after an agent who has done something deliberately in violation of NCAA rules, because the school, not just the player—the player suffers certainly—but if the school loses a good player prematurely, the school gets a black eye. It is almost as though somehow the school wasn't doing their job, but it is very hard to keep a finger on all of this. And then they lose a good player.

So, anyway, I think it is certainly legislation that is needed, and we appreciate this subcommittee addressing the issue. I would be more than happy to answer any questions that any of you have regarding the issue that we are talking about.

[The prepared statement of Hon. Tom Osborne follows:]

PREPARED STATEMENT OF HON. TOM OSBORNE, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF NEBRASKA

Thank you Chairman Stearns, Ranking Member Towns, and Members of the Committee. I appreciate the opportunity to come and speak with you today about legislation that the gentleman from Tennessee, Mr. Gordon, has introduced. I am pleased to join him in support of H.R. 4701, the Sports Agent Responsibility and Trust Act, or SPARTA.

Each year, hundreds of college athletes are offered illegal inducements to enter into contracts prior to the exhaustion of the athletes' eligibility by unscrupulous sports agents. During my 36 years as a football coach, I was deeply concerned by overly aggressive, unethical sports agents who compromised a student-athlete's eligibility or took financial advantage of student-athletes and their families. With the lure of big money involved in professional sports, I witnessed first-hand the difficulty in trying to keep agents and their runners from attempting to illegally recruit my players with cash and gifts. In pursuit of the hefty fees that are associated with representing professional athletes, sports agents engage in unethical behavior that undermines the integrity of college sports.

In addition, when sports agents engage in this type of impermissible behavior, their actions often result in three major problems for student-athletes and the schools they attend, while sports agents themselves often face little or no consequences.

First, when sports agents provide inducements to student-athletes and therefore break NCAA rules, the student-athletes lose his eligibility to compete in collegiate competitions, and often times lose his scholarships. For many of these collegiate athletes enticed into forfeiting eligibility, the loss of eligibility means the loss of a college education if they cannot afford to pay their own way. In addition to facing sanctions they may not expect, these athletes often times damage promising professional careers. When a sports agent promises a student-athlete fame and fortune—or a first-round draft selection—a focus on superstardom and wealth may prevent them from considering the consequences of signing away their NCAA eligibility.

Personally, I experienced having a player in the 1980s who was offered some illegal inducements, and in turn lost his eligibility, which for the most part ruined his career. This particular player was involved with agents who had already given illegal inducements to players across the country. Eventually, these agents were in-

dicted on a number of felonies, leading them to go as far as threaten some of the players with bodily harm. At the time, however, we lacked the laws to pursue these agents in the State of Nebraska, and these loopholes still exist today.

Unscrupulous agents often take advantage of students who have little or no experience in contract negotiations, potentially causing financial harm for student-athletes, their teams, and their respective schools. On a personal note, I had a player back in the 1980s that thought he signed a contract giving 3 percent of his earnings to the agent, but somewhere buried in the contract was a much larger figure of 13 percent of his earnings, causing him to lose thousands of dollars. Fortunately, this player was able to recover more than \$300,000 under California state law where this agent originated. In my home state of Nebraska, however, we did not have the laws to go after this agent.

Schools also stand to lose financially from the deceptive actions of sports agents. If a student-athlete loses his eligibility because he accepted inducements from an agent, and his ineligibility is not disclosed to the school and the ineligible student is allowed to compete in violation of the rules, that school may face a number of sanctions, including suspensions, fines, and the possible loss of post-season play and all the revenue that this might represent.

When student-athletes lose their eligibility by entering into an agency contract with unethical agents, intercollegiate athletics suffers because of the negative perception that is often associated with this type of activity. In recent years, the number of incidents where student-athletes were persuaded by unscrupulous agents to accept payment or other consideration in exchange for exclusive representation has created a negative perception that threatens the integrity of college athletics and the educational institution involved. While colleges and universities rarely do anything wrong in these situations, the mere fact that their student-athlete entered into such an agent contract reflects negatively on the school.

Why is this legislation necessary? As of April 2002, the National Football League Players Association reported that there were 1,196 certified football agents, almost double the number from 10 years ago. But, more than 800 of these agents have no clients. Hundreds of these so-called "agents" lack both certification and qualification. Unethical sports agents, often motivated purely by greed, will use any means necessary to represent a student-athlete who has even a remote chance of playing professional sports.

Currently, 17 states in our country, including my home state of Nebraska, have no regulations governing the conduct of sports agents, while many other states have a patchwork of vague and differing agent regulations. Until all 50 states adopt the same standards for regulating sports agents, there will be no uniformity in the laws governing sports agents. SPARTA would provide a minimum federal backstop for regulating sports agent conduct, while at the same time respecting tough state laws.

SPARTA would make it unlawful for an agent to give false or misleading information or make false promises or representations in order to entice a student-athlete into signing an agency contract. This legislation would also make it unlawful for an agent to fail to disclose to the student in writing before signing a contract that the student may lose his eligibility to compete in collegiate athletics. SPARTA requires sports agents and student-athletes to notify the school's athletic director within 72 hours—or before the student-athlete's next sporting event—of signing an agency contract. This legislation is needed in order to protect our student-athletes from unscrupulous sports agents.

The bottom line is, most student-athletes do not make it in professional sports. But, they may have been enticed to leave school early only later to realize that their agents acted solely for their own financial benefit, with no concern for the athletes' future. Over 36 years of coaching I saw too many student-athletes taken advantage of by sports agents looking out for their own bottom lines. I firmly believe we need to treat sports agents who lie, cheat and deceive, as we would treat any other businessperson who promises the world but delivers only heartache.

Thank you again for the opportunity to be here today to offer my thoughts about this important legislation.

Mr. STEARNS. Coach, thank you very much. I think it has been very enlightening for all of us to hear this, and particularly from your standpoint. Most of us have not had the distinguished career that you have had in athletics. So for you to step forward and to not only endorse this bill but to go out and speak in a proactive manner is very helpful.

You can bring keen insight that many of us don't have. I mean, you can name agents and players, and you know the history. So it is very important that you participate, so I want to thank you for doing that.

When I was thinking about this hearing, I was sort of appalled, just like you are, how agents are—it is sort of like the Wild West. They can do almost anything they want. Now, it appears—I asked staff—that Nebraska has yet to enact this—a State law. If I am correct, that is correct, isn't it?

Mr. OSBORNE. Right. There have been numerous attempts in the State legislature to enact some type of law, and it is has been blocked every time and for various reasons. And one thing I would like to point out is that this really shouldn't alarm attorneys. Sometimes attorneys get worried about things, but most of—there are very few of the agents that we are talking about are not—are attorneys. You know, most of these people have no training at all.

Mr. STEARNS. You say they don't have a college degree, a lot of them? No training?

Mr. OSBORNE. Some of them don't, yes. Right.

Mr. STEARNS. And they are saying, "I am an expert on PR. I am an expert on taxes," and so forth.

Mr. OSBORNE. Yes.

Mr. STEARNS. But I guess what I am trying to understand, why hasn't this been solved sooner? I think my colleague from Tennessee has done a great bill here, but I am really—from what you just said this morning, what the staff has told me earlier, it is—I just can't understand why the State of Nebraska has not done it. Has it been politics, do you think? Or is there anything you could reveal to us that—why the State of Nebraska has not done something about which is so corrupting and is so omnipresent?

Mr. OSBORNE. Well, you know, the difficulty has been that we have had an influence in the State legislature that says that if a player—you know, the NCAA and colleges exploit players. Therefore, if a player can get something, even if it is illegal, he ought to be allowed to do it. And that has been one of the arguments, and so I—you know, this is obviously something I have not adhered to.

But every State has their own reason. Sometimes it can be an individual who blocks it. Sometimes it can be, you know, several. But, obviously, it does seem to make sense to us that we need an overall Federal umbrella that would at least give some safety net.

Mr. STEARNS. And that is probably another reason why we should go ahead with this, is because we have got States that are reluctant to do it because of maybe political reasons, so maybe on the Federal side that we could solve that.

When these agents do some of the things you talk about, these deceptive practices, that perhaps lose the eligibility for the player, is it—are there any laws that they are breaking at all in terms of something **fraudulent** or deceptive that would break any known rules? Or is this—there is no known rules existing other than the player loses his eligibility if he or she takes a gift.

Mr. OSBORNE. Yes. And many agents have said, "Look, I didn't break any laws. You know, NCAA rules don't affect me."

Mr. STEARNS. So the player gets hit, but the agent never gets hit because—

Mr. OSBORNE. Yes, the player in school, right.

Mr. STEARNS. So there is no laws at all on the agents. So they are free—

Mr. OSBORNE. Well, some of the individuals I mentioned previously went to prison because they had violated some laws. In one case, I know that they actually used physical threats against players and threatened to break their leg or something like that, which probably isn't something you ought to be doing.

And we did have one case where we had a player who ended up signing with an agent that was rather unscrupulous, and the player thought he was signing for a 3 percent agent fee, and somewhere buried in the contract was 13 percent. So he ended up paying 13 percent, and this particular agent was from California.

California did have a State law. The agent did not register in California, which he should have. Therefore, there was some redress, and the player was able to recover about \$300,000 in excess fees because California had a law. In Nebraska we couldn't touch him, and so it does show you how a law can work. It can help, and in some cases does. But since we have no uniform standard, we have got a problem.

Mr. STEARNS. My last question, Coach, is a lot of these players are very susceptible. And, as you pointed out, this one player went out to Los Angeles and the bright lights turned his head. The question of the player knowingly or not knowing—I mean, do you think that we should be clear that some of these players are so naive, and they are so wishing to believe that a statute should provide whether he knew or not what was happening—in other words, how do we protect from those people that are just naive and go out there and an agent comes up to him—I am sure if an agent came up to me in high school and said something, I would just say “gosh” and go along.

Mr. OSBORNE. Well, you know, unfortunately, people tend to believe what they want to hear.

Mr. STEARNS. Yes.

Mr. OSBORNE. And so you can have a very good relationship with a player. You may have recruited him. You have been with him for 4 years. And yet when it comes to professional athletics, sometimes he will trust the word of somebody that he met 2 hours before more than he will the coach.

Mr. STEARNS. Right.

Mr. OSBORNE. And it is unbelievable. To me, it was genuinely unbelievable. And I don't want to say that the players have no responsibility, because the players are told over and over and over again what the rules are. But there are a few times when an agent can come in and say, “Look, you know, if you sign this, it really doesn't mean anything because it isn't dated until 6 months from now.” So it really doesn't go into effect, so you are really not obligated.

But when you make a verbal or a written agreement, you have compromised your eligibility. And so then the agent can come back and say, “Well, you signed it, and we have an agreement, and you are in trouble. And, therefore, you better go along with me.”

So there is some naivete here, and then there are some cases where the player just becomes a little greedy. But in any case, it

doesn't work out well. I would say 95 percent of the time a player that has signed early will become disenchanted and will try to get out of that contract, if not before he leaves school, after. None of these relationships last very long.

And as I mentioned, usually it is—the agent that comes in early is not a very competent agent. The only chance he has to sign a player is to come in early.

Mr. STEARNS. I am going to ask you one last question. It is a little more difficult, and it is asking you to really keep your hat on as coach and not as a Congressman. Mr. Gordon has done a great job on this bill. But if you could be the Speaker of the House, and you are sitting out there, and this bill has passed the House and it has passed the Senate—it has gone to conference—is there anything you would add to this bill to make it stronger?

You know, there is a question of preempting States' laws so that we have one Federal national law, so that we don't have 50 courts deciding in 50 States. You know, that is one possibility. Or, you know, I mean, so you are the Speaker of the House. It is in conference. What would you do? Anything different to the bill? I mean, in the early stages here, without—

Mr. OSBORNE. I don't think that I have anything, Mr. Chairman, I would add. Mr. Gordon and I have talked. We have worked together. We made a couple of minor changes, which I suggested. I think at one point there was an opportunity for the school to sue the player. I didn't think that would probably play very well in some regards, and so we took that out, because sometimes a player does something knowingly, sometimes he doesn't.

And so, anyway, we have made some changes. But my problem is I am not an attorney. I am not an expert in legal affairs. Therefore, I may be missing something there. I do know pretty much the ins and outs of the agent game from the college coaching side of it.

Mr. STEARNS. I think my time has expired.

The gentleman from Tennessee.

Mr. GORDON. Speaker Osborne, congratulations for your promotion. A lot of us had to stay around a lot longer to reach that. And I also thank you so much for all your expertise in what you have brought to this bill. Let me address a couple of things that were brought up.

I guess one question—why not before? I think part of it is, as you pointed out, the dollar figures have escalated so dramatically in the last few years that it is a different problem than it was before.

I think the other thing, as I have talked with sports writers around here and there, there is a natural inclination to be skeptical, particularly in the sports community, for anything with the Federal Government, any kind of regulation, more than probably even the business community or anywhere else. So there has been a reticence. And even when I first introduced it, the NCAA was opposing the bill, not the concept but preferring that it be done on a State level.

Well, I think now we have seen the problem has only gotten worse, that some States have moved forward, some haven't. And there has got to be some kind of uniformity, and there are different rules. And another question you asked, "Is there nothing you can

do?" Yes, there are some **fraud** type of laws that they are violating. But it is in a broad sense, and this I think narrows it, gives more remedies, and also things like notifying the school. This law will require the schools be notified.

Besides the student being disadvantaged, here you are as a coach, I mean, how many times have you told the players—you know, you are really trying to get them to act right, and then all of a sudden somebody comes in, a runner that pretended like they were a friend, an uncle, or whatever they might have been influenced, and they undo all the work that you have done. And so there is just a lot of things that can be done there.

I want to go back to another point, Representative Osborne, that you made, and that is that a lot of agents are good and decent, obviously, and serve a good purpose. But what has happened now I think is that you are brought down to the lowest common denominator. As a football coach, if the rest of the folks in your conference are cheating in some way and winning, it puts a lot of pressure on you, you know, not to do whatever they are doing, you know, and maybe lose.

So I think that the good sports agents are going to say thank you for bringing this in, so that it helps us do our job better and takes the pressure off of these other folks.

Mr. OSBORNE. I think you are correct. If I might interject there, a lot of the more reputable agents have gone to something recently simply to survive, and that is that once a player has completed their eligibility they have had to say play the game, that we are going to get you drafted higher.

And so they will say, "Well, now that you have finished, what we need to do is we need to take you to Los Angeles. And we are going to get you a personal trainer, and this guy is going to work with you every day. And we are going to get you a nutritionist, and we are going to work out with you. And when you go to that combine in Indianapolis, you are going to be faster and bigger and stronger than ever. And we are going to get you drafted higher. You know, you will be a first round pick."

So even the good guys are saying that kind of thing, and the problem is that that is a lot of malarkey. I mean, in Nebraska, we have got a better weight program, we have got a better nutritionist, we have got a better everything than what they have got in Los Angeles. And usually within two or 3 weeks these guys are disillusioned, and they say, "Hey, I left a place that prepared me better than any place could have."

They come back, but in the meantime they have dropped out of school. And they may only need 3 hours to graduation, and some of them never complete their degree. And so it is something that drove me crazy from an academic standpoint, even with a guy that had legitimately approached a player at the right time.

Mr. GORDON. I mean, these are 20-year olds that really, in this situation, don't have a second chance. One bad decision and they are out.

Mr. OSBORNE. Right. Yes, you can pretty well ruin your career in about 10 minutes.

Mr. GORDON. Yes. We have received a number—and we should—we will be getting those out later on, but a number of endorse-

ments from different coaches, from athletic directors, from all across the country. Can you—I mean, is there any reason that some—that a coach would not want this? I mean, is there—you know, why wouldn't we do this?

Mr. OSBORNE. I can see no reason. I don't know of any coach who would oppose it. I don't know any athletic director who would oppose it. I don't know any player that would oppose it if he had the big picture. And I think the NCAA at one point thought that it would be better to do it through the States, and it would be ideal if we could get all States to do it. But we have been at this a long time.

I mean, we have had State laws on the books for—in some States for 15 years. And, you know, we had the case at Penn State with Enos Sudaclose, who lost his eligibility, the FootLocker deal, Florida State—you know, some guy took some players down, and they thought they were just getting a free pair of tennis shoes. Well, a whole bunch of guys were all of a sudden obligated, and in some cases a State had a redress, and in some cases a State all of a sudden decided they were going to pass a law because they lost a high-profile player. But until something like that happens you just can't get their attention.

Mr. GORDON. If I could just real quickly close. Let me—I just want to point out also, we are not setting up a Federal sports police operation here. By and large, what this bill does is it deputizes the State attorney generals, and so the FTC—or no one else is going to be going out and doing this.

But it allows a coach or an athletic director, or whatever, in a particular State to go to their attorney general and say, "We have got this problem. You have got the authority. Take care of it." There is not a Federal police force for this.

Thank you.

Mr. OSBORNE. I might just add, you mentioned the part of the bill that requires the agent and the player to notify the school within 72 hours of signing a contract. That gives some legal foothold for the attorney general of the State or the school, because if a guy signs early, you know, and he hasn't reported it, and obviously he is not going to report it, you know, the agent and the player are in a catch 22 also, particularly the agent. And so I think that is a very good provision of the bill, that they have to notify the athletic director in writing within 72 hours or the next game before—after signing.

Mr. STEARNS. I thank the gentleman.

The gentleman from Arizona, Mr. Shadegg.

Mr. SHADEGG. Thank you, Mr. Chairman. I thank you for holding this hearing, and I compliment both you, Coach Osborne, and Mr. Gordon for offering this legislation.

I want to follow up on a point you just made with regard to the remedy for the university and some of the questions that the chairman asked with regard to the remedy. I guess one of the things that I am curious about would be the remedies under the bill. I see that, at least in the language of the bill, it makes this conduct unlawful, and it imposes what appear to be quasi-criminal penalties, including, as I—a summary that was given to me says \$11,000 per incident per day.

One of the questions that I would have would be, it seems to me there are a number of victims in this circumstance. Obviously, the young 20-year old athlete is a victim of an unscrupulous agent in this circumstance. It seems to me that an athletic program can also be a victim, if that athlete loses eligibility.

And I guess the question I would have for you or Mr. Gordon either one, or maybe staff, was there any thought given—and I just skimmed through the language of the bill and didn't see it—of inserting a declaration that it is against public policy for athletes to be induced to enter these contracts based on false representations or upon gratuities? And that upon any finding that that has happened that the contract itself is null and void as violative of public policy?

And I guess my thought there is, if you could declare the contract void, the contract that the athlete entered into with the agent, maybe you could then escape the athlete's ineligibility, since at least under these circumstances the athlete is induced to sign an agent's contract under circumstances that are either deceptive or violative of public policy.

That is, he was lied to or misrepresented about what signing the contract would mean, lied to about, for example, post-dating it, that that wouldn't have any effect, or lied to that taking the gratuity wouldn't violate his eligibility. And it seems to me if you could insert language saying this is against public policy, and, therefore, the contract is void, you might be able to undo the damage done to that athlete, and it seems to me also possibly undo the damage done to the athletic program, because if you can undo the contract, you render it void, maybe that athlete doesn't lose his or her eligibility. And I just wondered if any thought was given to that as a remedy.

Mr. OSBORNE. Well, that is a very good point. And I think the NCAA will be testifying, I believe, in some of their State—the legislation that they have tried to initiate at the State level. That provision may be there and—

Mr. GORDON. If I might help, Representative Osborne, on this.

Mr. OSBORNE. Yes, go ahead.

Mr. GORDON. As I understand it, to—

Mr. STEARNS. The gentleman yields to the gentleman from—

Mr. SHADEGG. Be happy to yield.

Mr. GORDON. The contract law really is a State jurisdiction, and so with Federal law we don't have the authority to make it null and void. But also, the other—you really want to stop this in the front end. The other problem that you have is, even having these kind of conversations, much less the signing, against—they can lose their eligibility through the NCAA.

The other sort of—an earlier part of your question about the school's sort of helplessness—under this law, the schools also have a right of litigation against the sports athlete. If they are penalized, if—you know, if—for some illegal activity, that they can't go to a bowl game, or this player can't play, they can take action also against the agent.

Mr. SHADEGG. Well, maybe it is better for me to ask somebody from the NCAA. But it seems to me that if we are going to pass a Federal law, if there is a need for a Federal statute, it seems to

me that Congress ought to have the right to declare something against public policy, and maybe there is a thought that we should put some injunctive right in there against—for a university or even the NCAA to go after agents and enjoin them from this conduct if they know there are agents out there doing it.

Mr. GORDON. If you would yield once again.

Mr. SHADEGG. I would be happy to yield.

Mr. GORDON. I think these are good ideas, and that we need to take this and see if it can be incorporated. Our earlier first shot at this through a—through not necessarily logic or good sense, but there are different jurisdictional matters for different purposes. There really ought to be criminal activity here, but we are—since we are going through the FTC, they only have jurisdiction really for civil.

All of those are good questions that need to be reviewed, and I think it, once again, goes to the reason or to our—the bill also encourages the States to move forward with their own—

Mr. SHADEGG. I see that.

Mr. GORDON. [continuing] criminal legislation. So I think it is going to be a combination. All of this will be reviewed, and we will take another shot at it, because I think you have raised some very good points.

Mr. SHADEGG. I throw those thoughts out and compliment you on your efforts.

Mr. OSBORNE. Yes. It would be ideal if we could just undo what had been done. And it is a little bit complex, because then the NCAA would also have to say, well, okay, we are going to exonerate you and give you your eligibility back, and we can't speak for the NCAA.

Mr. SHADEGG. Clearly, they have the jurisdiction to make that decision.

Mr. OSBORNE. Right.

Mr. SHADEGG. Thank you, Mr. Chairman. I yield back my time.

Mr. STEARNS. The gentleman yields back.

The gentlelady from California, Ms. Capps.

Ms. CAPPS. Thank you, Mr. Chairman. Thank you for holding this hearing, and I am pleased to be a part of a hearing where my colleague, Mr. Osborne, is testifying. And as he knows, I have relatives in the State of Nebraska, and some of your shine can rub off onto me. Being here in the presence of Coach Osborne, as he is known throughout the State that loves him so much for what he has done for athletics, is a great honor.

Mr. OSBORNE. Thank you.

Ms. CAPPS. We have a valuable witness here today who holds the idea of college athletics in the high and lofty view that it should be.

Mr. OSBORNE. Thank you.

Ms. CAPPS. I want to take advantage of your expertise and your relationship with the NCAA over the years and talk to us about the NCAA can become more empowered to educate, along with the colleges, young athletes.

Maybe we need to start in our secondary schools, as some of the sports agents, reach down into the high schools. We need an edu-

cated athlete, don't we, in terms of what their responsibility is. Is there any way that we can help to foster that within NCAA?

Mr. OSBORNE. Well, the NCAA can probably speak to that. I don't know that they have a formal educational program. You know, they certainly talk to the schools, and we talk to our players continually. We bring in former players. We bring in former agents. We had—you know, I don't think many of our players could say they weren't informed.

Ms. CAPPS. Right.

Mr. OSBORNE. But I think it is symptomatic of the culture that we tend to be very materialistic, and a lot of times if enough money is waved in front of a player, even a fairly ethical person sometimes will waiver. And I think the NCAA recognizes that. But I think you are correct that if you had every player doing the right thing, then this would not be a problem.

Ms. CAPPS. That is right.

Mr. OSBORNE. But, you know, the temptation is great. And I would have to say that probably in 30 or 40 percent of the cases there is some way that the agent has convinced the player that he is not doing anything wrong.

Ms. CAPPS. Right.

Mr. OSBORNE. Even though he has been educated, still that the idea—

Ms. CAPPS. Right.

Mr. OSBORNE. [continuing] Well, there is another angle here. So it is a problem, and I think that would be a question that would be well put to the NCAA.

I know the NFL has an organized program of different speakers who come around and talk to players about staying in school. You know, and they do talk about the agent issue, and they have done a pretty good proactive job. But still, it isn't enough.

Ms. CAPPS. So do you think the NCAA could model a program after the NFL?

Mr. OSBORNE. I have been out of it now for 4 years. Maybe they are doing something I don't know about, but I don't remember any speaker from the NCAA coming in and saying, you know, we really want to talk to your players, and we have got this organized program.

Ms. CAPPS. Right.

Mr. OSBORNE. But, you know, a lot of times people take shots at the NCAA, and some of their rules are pretty restrictive. But the NCAA—as we used to say, the NCAA is us. The NCAA isn't out there. It is not some foreign agency. It is really composed of the member institutions, and somebody has got to do the dirty work of policing the thing, and nobody likes the police when you are doing something wrong.

So he gets a bad name, but it is an effective organization. They do a good job. And it is voluntary, too.

Ms. CAPPS. Well, I do appreciate the work that you have done on this legislation of which I am happy to be a co-sponsor. What we are talking about today is a very big issue in colleges across this country. And whatever we can do to support good ethical behavior we want to do.

Mr. OSBORNE. They are very interested in it. And as I said earlier, they would like to do it at the State level, but it just hasn't gotten done. So I think this is needed. And, fortunately, you have a great university, and they may do some great things academically. And yet, if your football team gets in trouble, on a national scene it maybe does more damage to that university than, you know, if the chemistry department falls apart. It shouldn't be that way.

Ms. CAPPS. No.

Mr. OSBORNE. But that is kind of the hard, cold facts of the way things are right now.

Ms. CAPPS. And, in fact, at some universities they do away with organized athletics because they have gotten into so much trouble. And in the end, we all suffer as a result of that, because when done right it is an asset to higher education.

Mr. OSBORNE. That is right. And, of course, the sudden death penalty at SMU kind of raised the bar a little bit, and I think did help greatly. But it was very painful to SMU.

Ms. CAPPS. Thank you very much. I yield back.

Mr. STEARNS. I thank my colleague.

Coach, thank you very much for coming. We appreciate your testimony.

Mr. OSBORNE. Ookay. Thank you.

Mr. STEARNS. And now we will go to panel No. 2. We have Howard Beales, Director of the Bureau of Consumer Protection, Federal Trade Commission; James F. "Boots" Donnelly, the Athletic Director of Middle Tennessee State University; and William S. Saum, Director of Agent, Gambling and Amateurism Activities at The National Collegiate Athletic Association.

Let me welcome all of you folks here, and we look forward to your opening statement. And I think we will go from my left to my right, and we will start off with Mr. Beales, Director of Consumer Protection of the Federal Trade Commission.

STATEMENTS OF HOWARD BEALES, DIRECTOR, BUREAU OF CONSUMER PROTECTION, FEDERAL TRADE COMMISSION; JAMES F. "BOOTS" DONNELLY, ATHLETIC DIRECTOR, MIDDLE TENNESSEE STATE UNIVERSITY; AND WILLIAM S. SAUM, DIRECTOR OF AGENT, GAMBLING AND AMATEURISM ACTIVITIES, THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

Mr. BEALES. Thank you, Mr. Chairman, and members of the subcommittee. I am pleased to be here today to discuss the Sports Agent Responsibility and Trust Act, which designates as deceptive or unfair certain conduct by sports agents relating to the signing of contracts with student athletes.

The written statement presents the views of the Federal Trade Commission. My oral statement and responses to questions are my own and not necessarily those of the Commission or any individual commissioner.

The FTC has been directed by Congress to act in the public interest. The Commission continually monitors trends and developing issues in the marketplace to determine the most effective use of its resources. The Commission, therefore, focuses its resources on cases involving a large number of complaints or other evidence that

deceptive or unfair practices are widespread or an emerging trend. It does not generally focus on individual disputes.

We have some threshold concerns about this bill. Certain provisions appear to endorse and strengthen private restraints contained primarily in the NCAA's rules on student athlete eligibility to participate in collegiate sports. The proposed legislation furthers the NCAA's rules prohibiting student athletes who wish to maintain their college eligibility from entering into sports agency contracts.

Our general experience is that although many industry self-regulatory programs provide significant and desirable protections for consumers, it is important to consider whether particular private restraints may function to protect the industry rather than consumers.

For example, some have questioned the underlying basis of the NCAA's eligibility rules and how much of the revenue generated by college sports should flow to the students. Similarly, one might ask whether the government should endorse private NCAA rules that can result in the permanent loss of eligibility for even inadvertent violations.

Losing eligibility can reduce the athlete's chances of playing professionally and cost the athlete a scholarship that provides an opportunity for a college education. Because of such questions, it is important that Congress carefully examine the effects of the underlying private restraints before adopting legislation that supports them.

We are also concerned that some of the requirements in the proposed legislation are static. In particular, the required disclosure in the sports agent contract will apparently remain the same, absent additional Congressional action, even if at some future time the NCAA's eligibility rules change as the Olympic eligibility rules have changed. In such a case, not only may the disclosure itself become misleading, but the disclosure requirement could hamper otherwise worthwhile changes in the rules.

Furthermore, although there is clearly no room in any transaction for the false or misleading statements the proposed legislation would prohibit, some conduct addressed in the legislation is acceptable in many other markets. It is problematic here only because of the NCAA rules.

In particular, incentives as inducements to signing a contract are a common feature of marketing in many industries. Even understanding the vulnerability of many college athletes to tempting sales presentations with financial inducements, it may be possible to craft a less restrictive legislative proposal to address this concern.

We would urge the subcommittee to examine these issues before enacting legislation. We have some suggestions to modify the proposed legislation to better achieve its objectives. First, Section 3 of the bill prohibits sports agents from giving false or misleading information. Such deceptive statements are already prohibited by Section 5 of the FTC Act and numerous little FTC acts.

If Congress sees a need for additional avenues to challenge such practices, we believe that the most appropriate avenue would be a private right of action rather than additional public enforcement

provisions. A private right of action for student athletes would enable individuals to vindicate their rights in specific cases that might not be appropriate for Commission action taken in the broader public interest.

In addition, given the apparent close relationship between the proposed legislation and the existing NCAA rules, we suggest requiring a more complete disclosure of the circumstances that may lead to loss of eligibility under the rules. For example, we recommend amending several provisions of the legislation to clarify that a student athlete can lose eligibility by agreeing orally or in writing to enter into an agency agreement.

The suggested changes to these provisions, as well as other suggestions to more closely conform the legislation to the NCAA rules or to State law, are set forth in more detail in the Commission's written statement.

In sum, the FTC protects consumers from deceptive or unfair practices, but it generally focuses on acts and practices that affect a significant number of consumers or signify an emerging trend. We ask this subcommittee to examine carefully the need for and appropriateness of the underlying private restraint before enacting it into law.

In the event this subcommittee continues with the proposed legislation, we have provided suggestions on how the legislation can be revised to better achieve its stated goals.

Mr. Chairman, the FTC greatly appreciates this opportunity to testify, and I look forward to answering any questions you and the other members may have.

[The prepared statement of Howard Beales follows:]

PREPARED STATEMENT OF HOWARD BEALES, DIRECTOR, BUREAU OF CONSUMER PROTECTION, FEDERAL TRADE COMMISSION

I. INTRODUCTION

Mr. Chairman and members of the Subcommittee, I am Howard Beales, Director of the Bureau of Consumer Protection at the Federal Trade Commission (FTC). I am pleased to be here today to discuss H.R. 4701, a bill known as the "Sports Agent Responsibility and Trust Act" that designates as deceptive or unfair certain conduct by sports agents relating to the signing of contracts with student athletes.¹ This testimony begins with a general overview of the FTC and its enforcement authority. Second, it discusses the criteria the Commission considers in deciding whether to challenge deceptive or unfair practices under existing authority. Third, it notes the Commission's concerns about certain provisions of H.R. 4701. Fourth, it suggests possible revisions to enable the legislation to better achieve its stated goal.

II. THE COMMISSION'S CONSUMER PROTECTION MISSION

The FTC is charged with protecting consumers and promoting a competitive marketplace. The cornerstone of the Commission's mandate is Section 5 of the FTC Act, 15 U.S.C. § 45, which prohibits "unfair methods of competition" and "unfair or deceptive acts or practices." The FTC's consumer protection mission focuses on stopping actions that threaten consumers' opportunities to exercise informed choice. The FTC Act authorizes the Commission to halt deceptive or unfair practices through administrative cease and desist actions and equitable actions filed by FTC attorneys in federal district court. In appropriate cases, the Commission also may seek civil penalties, restitution to injured consumers, or disgorgement to the U.S. Treasury of defendants' ill-gotten gains.

¹ This written statement presents the views of the Federal Trade Commission. My oral statement and responses to questions are my own and are not necessarily those of the Commission or any individual Commissioner.

III. THE PUBLIC INTEREST

The FTC has been directed by Congress to act in the public interest.² When determining whether to initiate a law enforcement action, the Commission considers a number of factors, including: the type of violation alleged; the nature and amount of consumer injury at issue and the number of consumers affected; the likelihood of preventing future unlawful conduct; and the likelihood of securing appropriate relief, including redress. The Commission also considers to what extent states have regulated the area and the existence and effectiveness of appropriate voluntary industry standards and self-regulation.

The Commission continually monitors trends and developing issues in the marketplace to determine the most effective use of its resources. The Commission, therefore, focuses its resources on cases involving a large number of complaints or other evidence that the deceptive or unfair act or practice is widespread or an emerging trend, rather than individual disputes. For example, because of numerous complaints regarding deceptive practices used by modeling scams to persuade young consumers or their parents to pay exorbitant up-front fees for unnecessary services, the Commission has brought a number of cases against these types of scams.³ Similarly, because of large numbers of complaints regarding scholarship service scams proclaiming "FREE MONEY FOR COLLEGE," the Commission has filed nine cases against 11 companies and 30 individuals to combat this fraud.⁴

IV. THRESHOLD CONCERNS ABOUT CERTAIN PROVISIONS OF H.R. 4701

Certain provisions of H.R. 4701 appear to endorse and strengthen private restraints contained primarily in the NCAA's rules on student athletes' eligibility to participate in collegiate sports.⁵ The proposed legislation furthers the NCAA's rules prohibiting student athletes who wish to maintain their collegiate eligibility from entering into sports agency contracts. Specifically, the bill requires that any sports agency/representation contract include a disclosure clearly stating that the student athlete may lose eligibility if he or she signs the contract. The legislation also enacts a substantive ban on any gifts by sports agents to student athletes prior to the signing of a contract.

Our general experience is that, although many industry self-regulatory programs provide significant and desirable protection for consumers, it is important to consider whether particular private restraints may function to protect the industry rather than consumers. The Commission's extensive enforcement and oversight history with other self-regulatory industry organizations counsels us to advise caution before Congress enacts federal legislation to support or endorse specific non-public regulation. Academic articles on the effects of NCAA eligibility rules reveal diversity of opinion on their fairness and application.⁶ The public debate surrounding NCAA eligibility rules underscores the need for the careful examination of the effects of underlying private restraints before enacting legislation that supports them.⁷

² Section 5(b) of the FTC Act, 15 U.S.C. § 45(b), provides that

Whenever the Commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition or unfair or deceptive act or practice in or affecting commerce, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue . . . a complaint stating its charges.

³ See, e.g., *United States v. National Talent Associates*, Civ. Action No. 96-2617 (D.N.J.); *FTC v. Screen Test U.S.A.*, Civ. Action No. 99-2371 (WGB) (D.N.J.); *FTC v. Model 1, Inc.*, Civ. Action No. 99-737-A (E.D.Va.) (the local Better Business Bureau had received more complaints about this company than any other in its history).

⁴ *FTC v. Career Assistance Planning, Inc.*, Civil Action No. 1:96-CV-2187-MHS (N.D. Ga.); *FTC v. College Assistance Services, Inc.*, Case No. 96-6996-CIV-Highsmith (S.D. Fla.); *FTC v. Deco Consulting Services, Inc.*, Case No. 96-7196-CIV-Nesbitt (S.D. Fla.); *FTC v. National Grant Foundation, Inc.*, Case No. 97-7339-CIV-Lenard (S.D. Fla.); *FTC v. National Scholarship Foundation, Inc.*, Case No. 97-8836-CIV-Ferguson (S.D. Fla.); *FTC v. Christopher Nuaigwe*, Case No. 96-CV-2690 (D. Md.); *FTC v. Student Assistance Services, Inc.*, Case No. 96-6995-CIV-Roettger (S.D. Fla.); *FTC v. Student Aid Incorporated*, Case No. 96-CIV-6548 (S.D.N.Y.); and *FTC v. College Resource Management, Inc.*, Civil Action No. 3-01-CV-0828-G (N.D. Tex.).

⁵ It is our understanding that the Uniform Athlete Agents Act of 2000, which has been adopted by a number of states, similarly endorses NCAA rules on agent contracts.

⁶ See, e.g., Arthur A. Fleisher III, Brian L. Goff, and Robert D. Tollison, *The National Collegiate Athletic Association, A Study in Cartel Behavior* (1992); Gary Roberts, *The NCAA, Antitrust, and Consumer Welfare*, 70 Tul. L. Rev. 2631 (1996); Kevin E. Broyles, *NCAA Regulation of Intercollegiate Athletics: Time for a New Game Plan*, 46 Ala. L. Rev. 487 (1995); Lee Goldman, *Sports and Antitrust: Should College Students be Paid to Play?*, 65 Notre Dame L. Rev. 206 (1990).

⁷ Cf. *United States v. Walters*, 997 F.2d 1219, 1224-25 (7th Cir. 1993) (Court rejected use of the mail fraud statute "to shore up the rules of an influential private association" against a

We also are concerned that some of the requirements of the proposed legislation are static. In particular, the required disclosure in sports agent contracts will apparently remain the same, absent additional Congressional action, even if, at some time in the future, the NCAA's eligibility rules change, as the Olympic eligibility rules have changed. In such a case, not only may the disclosure itself become misleading, but the disclosure requirement could hamper worthwhile changes in the rules.

Furthermore, although there is clearly no room in any consumer or commercial transaction for the false or misleading statements the proposed legislation would prohibit, some conduct addressed in the legislation is acceptable in many other markets. In particular, the use of incentives as inducements to signing a contract are common features of marketing in many industries. Even understanding the vulnerability of many college student athletes to tempting sales presentations with financial inducements, it may be possible to craft a less restrictive legislative provision to address this concern. We would urge the Subcommittee to examine these issues before enacting legislation.

V. SUGGESTIONS TO MODIFY THE PROPOSED LEGISLATION

We have some suggestions to modify the proposed legislation. First, Section 3 of H.R. 4701 prohibits sports agents from giving false or misleading information—such as deceptive statements that already are prohibited by Section 5 of the FTC Act and numerous state “Little FTC” Acts. If Congress sees a need for additional avenues to challenge such practices, we believe that the most appropriate avenue would be a private right of action rather than additional public enforcement provisions. A private right of action would enable individuals to vindicate their rights in specific cases that might not be appropriate for Commission action taken in the public interest. We note, however, that although Section 6 of H.R. 4701 provides for a private right of action to universities injured as a result of an agent's conduct, there is no similar private right of action provided to injured individual student athletes. Adding such a cause of action would further the proposed legislation's purpose to protect student athletes.

In addition, given the apparent close relationship between the proposed legislation and the existing NCAA rules, we suggest requiring a more complete disclosure of those circumstances that may lead to loss of eligibility under the rules. Such a fuller disclosure would better provide student athletes with opportunities to exercise informed choices. For example, it is our understanding that the NCAA rules prohibit a high school or college student athlete from agreeing, either orally or in writing, to be represented by an agent (regardless of when the contract becomes effective). Accordingly, to better protect student athletes from unwittingly losing eligibility, the definition of “agency contract,” which currently refers only to written contracts, should be amended to clarify that the agreement may be oral or written.

In addition, Section 3(b) of the proposed legislation requires the agent to provide a written disclosure that the student athlete must sign before the student athlete signs an agency contract. Because NCAA rules prohibit a verbal commitment as well as a written commitment, we recommend modifying the language to require the disclosure before there are any substantive discussions regarding possible representation that might give rise to commitment.

As another example, it is our understanding that NCAA rules prohibit student athletes, as well as family members and friends who may be able to influence a student athlete, from receiving any benefits or gifts from an agent. Accordingly, we recommend modifying Section 3(a)(1)(B) to include providing anything of value to student athletes, family members, or friends who may influence a decision.

Further, it is our understanding that state law may restrict some student athletes' ability to enter into a contract on their own due to their age, and that a parent or guardian must sign the contract on their behalf. To ensure the proposed legislation protects all student athletes, regardless of age, we recommend inserting “or parent or guardian” after “student athlete” in proposed Section 3(a)(2).

Finally, we recommend that the Congress consider three modifications to the required disclosure set forth in Section 3(b). First, as a general matter, it has been our experience that disclosures in “plain English,” so consumers can easily understand them, are the most effective. Second, to avoid inadvertently misleading student athletes, the disclosure should both track the NCAA's current rules regarding oral or written commitments and provide for adjustments should the rules change. Third, although section 6 of the proposed legislation imposes on student athletes the obligation to notify their educational institutions within 72 hours after they have

sports agent who secretly signed college football players to agency contracts before their college eligibility expired).

entered into an agency contract, the proposed legislation takes no steps to ensure student athletes are aware of this obligation. The required disclosure, therefore, should alert student athletes of their notification obligations under the proposed legislation.

VI. CONCLUSION

In sum, the FTC protects consumers from deceptive or unfair acts and practices, but it generally focuses on acts and practices that affect a significant number of consumers or signify an emerging trend. We ask this Subcommittee to examine carefully the need for and the appropriateness of the underlying private restraint before enacting it into law. In the event this Subcommittee continues with the proposed legislation, we have provided suggestions, based on our experience with consumer disclosures, on how the legislation can be revised to better achieve its stated goal.

Mr. Chairman, the FTC greatly appreciates this opportunity to testify. I would be happy to answer any questions that you and other Members may have.

Mr. STEARNS. I thank the gentleman.

Mr. Donnelly, we welcome your opening statement.

STATEMENT OF JAMES F. "BOOTS" DONNELLY

Mr. DONNELLY. Before I begin, let me also thank Congressman Gordon and Congressman Osborne for their leadership in introducing the Sports Agent Responsibility and Trust Act.

You know, I basically come as an athletic director, ex-head football coach for well over 22 years. The sports agent is a problem. It is a major problem. Congressman Osborne touched on just about everything that I will be touching on, but I can give you examples. He spoke earlier about an agent by the name of Bloom, who is—I believe he is still in prison.

The sports agent Bloom was on my campus as far back as 1986-87. He came in at 10:30 at night, went directly to an athlete that I had room, would not leave the room. We came very close to having a physical confrontation, not only a heated conversation with him. There were stretch limos, bodyguards, threats of physical harm to players, and later he ended up in prison.

I come before you as a coach, as a member of Middle Tennessee State University, and we know what the problem is, because we have been there. We don't know what the solutions are.

The biggest headaches that we have is Congressman Gordon—Osborne, excuse me, spoke about the athlete and the agent. What it really brings down the pike is a tremendous amount of terrible publicity for the individual, university, and also for the athletic department at any university. And, you know, there are so many horror stories out there, and all of them are basically true.

We even had a young man come to our campus and walk on, ask permission to walk on as a kicker, and stayed and befriended our players, took them to dinner, paid for movies, even went to Florida and different locations for vacation and became obligated, became very, very close friends of our players. And later on down the road they found out that he was a runner.

Some of you may not understand who the runners are. The runners can be ex-players. The runners can be people that is in the community. Runners can be students. Runners can basically be anywhere, and we cannot get our hands on all of them. We have even had—agents have runners. Any time our basketball teams or whatever would fly commercially, they would get on the commercial flight to every location that you would play.

Congressman Osborne spoke about agents being in the lobby. They are free to do that. They are free to get on commercial flights. They know exactly what they can and what they cannot do.

He touched on also the athlete leaving school early. We have one currently left school at the end of the fall semester because he was drafted. The agent that he signed with convinced him that he needed to leave, go to the State of Florida, and spend the rest of the spring working out with a trainer or whatever it may be. And they get themselves obligated, and they get themselves in these binds, and they lose out for the last semester of school.

So many things—so many ways they get to our athletes. We keep speaking of a runner. Does the athlete know what he is doing is right or wrong? In most of the cases they—probably all of the cases, the point that I want to touch on is that if you will look at where money is coming from—and there is millions of dollars in signing in the first round, the second round, and it is reduced down for the third. But where the majority of the money is made is in the first three rounds in the NFL draft.

But you have 30 NFL football teams, so you are talking about 90 top athletes who are going to have the opportunity to make a large sum of money. But you have approximately 2,000 agents that are registered with the NFL; 800 of them don't have an agent. So that is where everything starts trying to figure how, do you go about getting the upper hand on signing one of these top athletes, and they go through aunts, they go through uncles.

And if you have ever gone into the inner cities down in the south, Georgia, the mountains of Tennessee, and see the economic background of these people, then you start understanding why it is pretty easy for these agents to entice them to get them to come and sign early with them, to take clothing or whatever it may be.

So I am here to ask that you strongly consider this bill, pass this bill. There is no AD that I know, there is no university president that I know, there is no coach, that will not endorse this. And we need this bill passed as quickly as we can possibly get it passed, and I do thank you for my time.

Thank you very much.

[The prepared statement of James F. Donnelly follows:]

PREPARED STATEMENT OF JAMES F. DONNELLY, ATHLETICS DIRECTOR, MIDDLE
TENNESSEE STATE UNIVERSITY

I am James F. Donnelly, current athletic director and former head football coach for 22 years at Middle Tennessee State University. Middle Tennessee State University is located in Murfreesboro, Tennessee and is regarded as one of the leading universities in the region. Middle Tennessee competes at the highest level of intercollegiate athletics in 17 sports and is a member of the Sun Belt Conference. The university has an enrollment of over 20,000 students.

Before I begin, I would like to thank Congressman Gordon and Congressman Osborne for their leadership in introducing the Sports Agent Responsibility and Trust Act (SPARTA).

As of April 2002, the National Football League Players Association reported that there were 1,196 certified football agents, almost double the number from 10 years ago—over 800 of them, however, have no clients.

WHY COACHES AND UNIVERSITIES ARE CONCERNED ABOUT SPORTS AGENTS?

1. In today's society, professional athletes are highly compensated and most have agents that perform valuable services.

2. Unfortunately, the illicit practices of some of these agents, would-be agents and their runners have caused serious problems for student-athletes and educational institutions as these agents aggressively pursue the substantial fees that accompany the representation of professional athletes.

3. These agents, motivated largely by financial considerations, are willing to use any means necessary to represent a student-athlete who has even a remote chance of playing professional sports. They frequently employ tactics that involve secret payments to friends and relatives who may be in a position to influence the athlete, unrealistic promises, and considerable arm-twisting.

4. There can be significant damage that results from these impermissible and oftentimes illegal practices. Impermissible benefits provided by agents violate NCAA rules and may result in the following:

- a. Student-athlete ineligibility for participation in NCAA competition.
- b. Harsh penalties on the team and the university (including the imposition of NCAA sanctions that have resulted in the repayment of monies received from NCAA championship competition, forfeiture of contests and other penalties).
- c. Student-athletes may be enticed to pursue a professional career and leave school early only to later realize that their agent gave them bad advice.

WHY WE NEED TO ADOPT THE SPORTS AGENT RESPONSIBILITY AND TRUST ACT (SPARTA).

H.R. 4701 has many important features:

- The adoption of the Act will make it unlawful for an agent to: Provide false or misleading information; Make false or misleading promises or representations; Provide anything of value to the student-athlete or anyone associated with the athlete; Fail to disclose to the student in writing that they may lose their eligibility to compete in collegiate sports before signing a contract; or Predate or postdate contracts.

EXAMPLE #1

Facts: In the mid-1980s, a high profile athlete was resting in his dorm room at approximately 10:10:30 p.m. when a sports agent and his entourage parked a limousine in front of the athletic dorm. The sports agent then walked into the dorm and went directly to the student-athlete's room and knocked on the door. The student-athlete closed the door, then immediately called the head coach. The head coach went to the dorm and had a heated conversation with the agent, and eventually the agent left campus. Not only did the agent know the student-athlete's room number, but he also had his phone number and he continued to call and harass the student-athlete.

Institutional Action: During this time, an athlete was declared ineligible for the remainder of the athletic season if he had any lengthy conversations with a sports agent. The rule has now been changed to where the penalty is for signing with a sports agent.

EXAMPLE #2

Facts: A student asked permission to become a walk-on for the football program. The student is full-time, joins the team and becomes friends with a number of team members. The student then pays for various meals, movies, and other entertainment as a friend of certain players. Later, the players and staff find out the student is actually a runner for a sports agent.

Institutional Action: No action was taken since the athlete never met the agent.

EXAMPLE #3

Facts: Student-athlete and his roommate traveled via automobile from certifying institution's community to Las Vegas, NV. Student-athlete and his roommate stayed in Las Vegas April 6-10, 2001. Institution noted that student-athlete stayed in one hotel, and his roommate stayed at another hotel. A representative of a sports agency paid for student-athlete's roommate's hotel bill (\$268.02). Student-athlete noted that he was not aware that his roommate's hotel was paid for by the representative and did not become aware of the violation until he was questioned by institution. Institution noted that the representative was not aware that student-athlete and/or his roommate would be in Las Vegas during the time period in question. While in Las Vegas, student-athlete engaged in pick-up contests with other individuals. Student-athlete did not know the other individuals who participated in the pick-up basketball contests, except for one individual. Two professional sports agents were present at the pick-up basketball game. Student-athlete knew that the two individuals watching the pick-up basketball contests were professional sports agents, since he was previously introduced to the agents by a former teammate.

Institutional Action: Institution required student-athlete to repay the value of the impermissible benefit to a charity of student-athlete's choice.

EXAMPLE #4

Facts: Student-athlete accepted transportation (13 blocks) from an individual who student-athlete knew was a runner for a sports agent. Student-athlete was also provided with the use of a leased 2002 Ford Expedition for approximately six weeks by an individual who met student-athlete during his freshman year at institution. Institution has valued the use of the vehicle at \$807.57 due to the monthly lease payments of \$538.38. Early in August, student-athlete had previously driven a 1994 Chrysler Sebring, which was owned by his mother until the brakes failed, and the car was towed for repairs. Early in September, student-athlete asked his roommate to give him a ride to a car dealership where student-athlete was dropped off. Student-athlete, the runner and a former student-athlete, now institutional groundskeeper, were at the dealership on the same day. Student-athlete states that the runner was not near student-athlete when he was looking at various cars and had a conversation with a sales manager. Student-athlete and former student-athlete left the dealership after looking at a number of cars. The runner and the sales manager then were engaged in conversation. After the conversation, a 2002 Ford Expedition was put on hold until November 18 in the runner's name. The runner then transported student-athlete to his apartment from the dealership. Several days later the runner was with the individual at the dealership and the individual leased the same Expedition on September 15. Individual and student-athlete then had a telephone conversation where the individual offered the use of the Expedition to student-athlete in light of student-athlete's car being repaired. Several days later the individual dropped off the Expedition of student-athlete's apartment for student-athlete to use until student-athlete got his car back from being repaired. Student-athlete had use of the car for approximately six weeks.

Institutional Action: Institution required repayment for use of the vehicle (\$807.57). The student-athlete was withheld from 60 percent of the season.

EXAMPLE #5

Facts: Prior to initial collegiate enrollment, student-athlete signed a contract with a sports management group. Student-athlete signed the contract in December 2000, at the age of 19. Under the terms of the contract the sports management group was to act as student-athlete's manager and advisor. Student-athlete, a foreign student, signed the contract in an attempt to gain entry into higher caliber track meets. Specifically, the owner of the sports management group also serves as the media officer for the foreign country's Olympic team. Student-athlete hoped that his association with the sports management groups owner would assist him in gaining access to track meets that he would not have otherwise been invited to. Student-athlete did not receive any compensation or sponsorship agreements from the contract. Further, student-athlete did not gain entry to any track events. The contract was terminated as soon as the student-athlete learned that such a contract was not permissible under NCAA regulations.

EXAMPLE #6

Facts: Student-athlete accepted a plane ticket (\$339), transportation (\$18.60) and a meal (\$6.00) from an acquaintance that was a runner for an agent. While speaking to the acquaintance via telephone during the 2000 fall semester, student-athlete stated his desire to go a different city for the weekend because once applicant institution's basketball season began there would not be a break until the end of the season. Student-athlete's acquaintance purchased student-athlete an electronic plane ticket and met student-athlete at his arrival at the airport of the different city. Student-athlete's former high school classmate, also an elite Division I men's basketball student-athlete currently attending a separate institution located in a different city, was with student-athlete's acquaintance when acquaintance picked student-athlete up at the airport. Student-athlete's acquaintance provided student-athlete with transportation and a meal during the weekend. At some point during the weekend student-athlete's acquaintance informed student-athlete that he wished for student-athlete to meet an agent. After breakfast on Sunday morning, student-athlete's acquaintance transported student-athlete to the agent's home and introduced student-athlete to agent. The agent informed student-athlete that he wished to represent him when he became a professional athlete and student-athlete informed the agent that he would consider it. Student-athlete was interviewed three times and provided false and misleading information to institution and NCAA enforcement officials during first two interviews.

Institutional Action: Institution withheld student-athlete from one exhibition contest, six regular season contests and required student-athlete to repay benefits received from agent and/or runner.

CONCLUSION—I URGE CONGRESS TO ADOPT THE SPORTS AGENT RESPONSIBILITY AND TRUST ACT (SPARTA)

1. The Sports Agent Responsibility and Trust Act is strongly supported by the NCAA and its 1,000 member institutions. I think I speak for all my administrative and coaching colleagues in Tennessee when I say that we strongly urge Congress to adopt H.R. 4701 as quickly as possible.

2. Will this be a panacea for all athlete agent problems? No. However, there is no question that the act will provide protections for student-athletes and institutions while also providing uniform rules across all states for agents to conduct their business.

THERE'S NOT ENOUGH CATS (NCAA AND COACHES) TO CATCH ALL THE RATS (SPORTS AGENTS AND RUNNERS) IN INTERCOLLEGIATE ATHLETICS.

FOR PROTECTION OF OUR ATHLETES ACROSS THE COUNTRY, I STRONGLY ENCOURAGE THE PASSAGE OF H.R. 4701.

Mr. STEARNS. Thank you, Mr. Donnelly.

Mr. Saum, we welcome your opening statement.

STATEMENT OF WILLIAM S. SAUM

Mr. SAUM. Good morning. Thank you for opportunity to testify on behalf of The National Collegiate Athletic Association and to express our support for H.R. 4701, the Sports Agent Responsibility and Trust Act.

The NCAA is a tax-exempt, unincorporated association of approximately 1,260 colleges, universities, athletic conferences, and related organizations devoted to the regulation and promotion of intercollege athletics for both male and female student athletes.

As Director of Agent, Gambling and Amateurism Activities, and a former campus administrator and coach, I am acutely aware of the impact that the unscrupulous athlete agent can have on the lives of college student athletes. In today's society, professional athletes are highly compensated, and most have agents that perform valuable services.

Unfortunately, the illicit practices of some of these agents, would-be agents, and their runners have caused serious problems for student athletes and our educational institutions as these folks have aggressively pursued the substantial fees that accompany the representation of professional athletes.

These agents, motivated largely by financial considerations, are willing to use any means necessary to represent a student athlete who has even a remote chance of playing a professional sport. They frequently employ tactics that include secret payments or gifts, including autos, cash, clothing, and trips, given to the athlete, or undisclosed payments to friends and relatives who may be in a position to influence the athlete, or provide unrealistic promises and considerable arm twisting.

There can be significant damage that results from these impermissible and often times illegal practices. Impermissible benefits provided by agents violate NCAA rules and may result in the following: student athlete ineligibility for participation in NCAA competition, harsh penalties on the team, the university, including the imposition of NCAA sanctions that have resulted in the repayment of monies received from participation in NCAA championships, and the forfeiture of contests and other penalties.

SPARTA would make it unlawful for an agent to give false or misleading information, to make false or misleading promises, and to provide anything of value to the student or any individual associated with the student; fail to disclose in writing to the student that they may lose their eligibility to compete as a student athlete if they sign an agency contract; or pre-date or post-date contracts. All of these activities are necessary to protect our student athletes from unscrupulous sports agents.

In addition, the NCAA strongly supports Section 7 of SPARTA that recommends States pass the Uniform Athlete Agent Act. The adoption of the State model creates a comprehensive uniform registration process that will provide important consumer information for student athletes, parents, and institutions, as they will have access to the detailed information contained in the agent application.

Currently, the Uniform Athlete Agent Act has passed in 16 jurisdictions, and we plan to work hard in the coming year to get it passed in more States. The NCAA has developed an arsenal of educational information on athlete agents, including videos that raise awareness about agents and NCAA rules, an NCAA information packet, including a list of questions that student athletes should ask when interviewing agents. Also, an important brochure entitled "A Career in Professional Athletics" is available to our member schools.

The NCAA's Agent, Gambling and Amateurism Activities staff works closely with high school athletes, member institutions, and even sports agents organizations through the professional players associations. In short, we want to educate student athletes, athletic administrators, and agents, to prevent violations of NCAA rules and enforce the current agent regulations.

Our member schools have developed a variety of programs to achieve these results. Several schools conduct agent days where a student athlete can meet with an agent in an organized and monitored manner. Many of our schools also conduct educational seminars for their elite athletes, which include alumni who have participated at the professional level. These alumni provide firsthand experiences for the enrolled student athletes to learn from.

Finally, our schools provide a panel of experts that we call the Pro Sports Counseling Panel, for athletes to visit with regarding the search for an agent. SPARTA, in conjunction with the Uniform Athlete Agent Act in all 50 States, will provide important and necessary steps to address the problem of the unscrupulous athlete agent. The NCAA plans to continue its strong efforts and use its resources to pass the UAAA in the remaining States.

Thank you for this opportunity, and we would be happy to answer any of your questions.

[The prepared statement of William S. Saum follows:]

PREPARED STATEMENT OF WILLIAM S. SAUM, DIRECTOR OF AGENT, GAMBLING AND AMATEURISM ACTIVITIES, NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

I appreciate the opportunity to testify on behalf of the National Collegiate Athletic Association (NCAA) and to express our support for H.R. 4701, the Sports Agent Responsibility and Trust Act (SPARTA). The NCAA is a tax-exempt, unincorporated association of approximately 1,260 colleges, universities, athletics conferences and related organizations devoted to the regulation and promotion of intercollegiate athletics for male and female student-athletes.

As director of agent, gambling and amateurism activities, and a former campus administrator and coach, I am acutely aware of the impact that unscrupulous athlete agents can have on the lives of college student-athletes. In today's society, professional athletes are highly compensated and most have agents that perform valuable services. Unfortunately, the illicit practices of some of these agents, would-be agents and their runners have caused serious problems for student-athletes and educational institutions as these agents aggressively pursue the substantial fees that accompany the representation of professional athletes. These agents, motivated largely by financial considerations, are willing to use any means necessary to represent a student-athlete who has even a remote chance of playing professional sports. They frequently employ tactics that involve secret payments or gifts (goods, autos, cash, clothing) to the athlete, undisclosed payments to friends and relatives who may be in a position to influence the athlete, unrealistic promises and considerable arm-twisting.

There can be significant damage that results from these impermissible and oftentimes illegal practices. Impermissible benefits provided by agents violate NCAA rules and may result in the following: student-athlete ineligibility for participation in NCAA competition, harsh penalties on the team and the university (including the imposition of NCAA sanctions that have resulted in the repayment of monies received from NCAA championship competition, forfeiture of contests and other penalties.)

The SPARTA would make it unlawful for an agent to give false or misleading information or make false or misleading promises or representations; provide anything of value to students or any individuals associated with these students; fail to disclose in writing to students that they may lose their eligibility to compete as student-athletes if they sign an agency contract; or to predate or postdate contracts. All of these activities are necessary to protect our student-athletes from unscrupulous agents.

In addition, the NCAA strongly supports Section 7 of SPARTA that recommends states pass the Uniform Athlete Agent Act. The adoption of the state model bill creates a comprehensive, uniform registration process that will provide important consumer information for student-athletes, parents and institutions, as they will have access to the detailed information contained in the agent application. Currently, the Uniform Athlete Agent Act (UAAA) has been passed in 16 jurisdictions; we plan to work hard in the coming year to get it passed in many more states.

The NCAA has developed an arsenal of educational information on athlete agents, including videos that raise the awareness about agents and NCAA regulations, an NCAA information packet and a list of questions that student-athletes should ask agents. Also, an important brochure entitled "A Career in Professional Athletics" is available to member schools.

The NCAA's agent, gambling and amateurism activities staff works closely with high school athletes, member institutions and even agent groups, through the professional players associations. In short, we want to educate student-athletes, athletics administrators and agents, prevent violations of NCAA regulations, and enforce the current agent rules.

Our member institutions have developed a variety of programs to achieve these results. Several schools conduct agent days where a student-athlete can meet with an agent in an organized and monitored manner. Many of our schools also conduct educational seminars for their elite athletes, which include alumni who have participated at the professional level. These alumni provide first-hand experiences from which enrolled athletes can learn. Finally, our schools provide a panel of experts (Pro Sports Counseling Panel) for athletes to visit with regarding the search for an agent.

The SPARTA, in conjunction with the UAAA in all 50 states, will provide important and necessary steps to address the problem of unscrupulous athlete agents. The NCAA plans to continue its strong efforts and use its resources to pass the UAAA in the remaining states.

Mr. STEARNS. Thank you, Mr. Saum. I will start with my opening questions.

Mr. Beales, in your opening statement, you talked about the FTC has the responsibility, is charged with protecting consumers, and, of course, at the same time promoting a competitive marketplace. You said the cornerstone of your responsibility is the implementing and enforcing of Section 5 of the FTC Act, 15 U.S.C. 45, which pro-

hibits unfair methods of competition and unfair or deceptive acts or practices.

Now, has the FTC has been asleep at the wheel here? You heard two coaches talk. Why hasn't the Commission pursued any action against sports agents under Section 5, like you said in your opening statement?

Mr. BEALES. Typically, the way we approach case selection is we look for places where there are relatively widespread problems involving—

Mr. STEARNS. Obviously, there is widespread problem.

Mr. BEALES. [continuing] in particular a particular company. It may be that the heart of the difficulty here is that there is sort of one problem per agent because that is all the students that they represent. But in terms of the complaints that come to us, we don't have any complaints about problems that have involved sports agents.

Mr. STEARNS. We have heard complaints today.

Mr. BEALES. We certainly have.

Mr. STEARNS. Okay. You would agree on that.

Mr. BEALES. Yes.

Mr. STEARNS. Okay. Does that mean today you are going to go back and do something?

Mr. BEALES. Well, we haven't heard—and this is an area where if there was an agent that was systematically making misrepresentations to potential student athlete clients, we would certainly be interested in a case like that. That would be a violation of Section 5. It is something we would want to pursue.

Mr. STEARNS. But what do you have to do? What has to be initiated to get your attention? What do you consider in determining whether or not there is enforcement of Section 5? I mean, is there something that has not been brought here in this hearing that—are there other considerations that would get you folks galvanized to do something?

Mr. BEALES. Well, there are two primary considerations that go into all of our case selection decisions. One is the number of people affected, the number of—

Mr. STEARNS. It has to be more than one, two, five, a hundred? How many people have to be affected?

Mr. BEALES. There is not a bright line, but our alternative case might be something where there are millions of consumers affected.

Mr. STEARNS. Okay. So if—

Mr. BEALES. And there is a small resource allocation budget.

Mr. STEARNS. You wouldn't be concerned with a small number.

Mr. BEALES. Well, sometimes we do pursue cases where there are small numbers, where we see an emerging trend or a new practice that is—that we need to address as the particular practice. So it is not—I mean, there is not a bright line standard. But in terms of how we allocate our resources, we are looking for cases where there are larger numbers of people affected and larger injury per person affected. And that is—there is nothing distinct about any particular industry that says it is in or it is out.

Mr. STEARNS. So that is the sum summary of whether you determine whether to act under Section 5, whether there is a lot of people and there is financial damage.

Mr. BEALES. Well, the damage doesn't have to be financial. The injury can occur in many sorts of ways. But whether—the number of people affected and the extent of injury, absolutely.

Mr. STEARNS. Has there been any case in which you have pursued, under Section 5 pertaining to this sports agent, in the history of the FTC?

Mr. BEALES. Not to my knowledge.

Mr. STEARNS. And why do you think that is? I guess because there has been no infractions?

Mr. BEALES. I don't think there have been any—we don't know of any infractions that have risen to a level that any prior Bureau director or Commission has thought warranted FTC action.

Mr. STEARNS. So the FTC's position, then, is that there has been no infractions that occurred that have—that would require your attention at this time. Am I pretty much putting into words what you are just saying?

Mr. BEALES. Not that there have been none, because we don't know that. But none that have come to our attention, I mean, which is a different statement.

Mr. STEARNS. You had mentioned in your testimony that you are afraid that H.R. 4701 is endorsing and strengthening the restraints imposed by a self-regulatory organization, namely the NCAA. Can you please explain what you mean by that?

Mr. BEALES. Well, the NCAA is a private organization. It represents, I am certain ably, the interests of the institutions that are part of it. It does not include other people who have an interest in the outcome of its rules and are affected by its rules, and it makes decisions based on what it sees as the public interest. But it is a private organization making that decision.

It may be the right answer. Our only question—our only comment was that we think it makes sense for the Congress to look at whether those rules are the right rules before it enacts laws based on those rules.

Mr. STEARNS. Seventeen States have passed similar laws to this, like this, which, you know, implicit in these laws that they pass are the same thing they are endorsing and strengthening restraints imposed upon a self-regulatory organization. Do you think they are wrong in doing that?

Mr. BEALES. I have no idea the extent to which they looked at the rules, and that is all we are saying. If you assume the rules are the right rules, then a lot of this makes sense. That is—but our point is we don't have—we don't know that these are the right rules. It is not an area in which we have devoted any particular attention.

We do know that private restraints tend to look out for the people who wrote the restraint, and they don't always serve the interests of consumers.

Mr. STEARNS. So, then, the position of the FTC, as I understand it this morning, is you do not endorse this bill.

Mr. BEALES. I think that is correct, yes, sir.

Mr. STEARNS. So you would say that we should rewrite it, or are you saying—are you saying that the FTC, under Section 5, can take care of this, and we need no legislation?

Mr. BEALES. For the parts that are deceptive or unfair practices, that we can do without legislation, if there are problems that are out there that would warrant our attention. Some parts of this, like, for example, the prohibition on gifts, would not, in ordinary circumstances, violate Section 5. I mean, that is a common practice, as I said, in a number of industries.

So in other places, if you want to achieve that result, then you do need legislation. I think our comment is—goes mostly to what we think you should look at in making that decision, which is to look at the rules themselves as well as the conduct of the agents.

Mr. STEARNS. Okay. My last question. Mr. Donnelly, you had mentioned some of these problems. But as I understand from staff, the State of Tennessee passed a bill. Now, has that affected you in any way? I mean, has that—what they passed in the legislature—

Mr. DONNELLY. Well, they basically—

Mr. STEARNS. [continuing] made the problem go away for you as a coach?

Mr. DONNELLY. No, sir, it has not.

Mr. STEARNS. And why is that?

Mr. DONNELLY. Because the teeth of that law, they basically asked that each agent register with the State. The agents that have absolutely nothing to hide, the good agents—

Mr. STEARNS. They register. The runners and the illegal agents don't.

Mr. DONNELLY. The others don't. They don't.

Mr. STEARNS. So it still—the law has had no effect.

Mr. DONNELLY. It has no effect as—on the local level in our State. There is X number of very fine quality agents that come directly to you, directly to your office, or go by—however you want it to be handled they will go by it. The others, they are like in the still of the night that they come in, and they go out. And once they get the athlete committed, then the athlete is not going to talk either, because they start threatening with whatever it may be.

Mr. STEARNS. Wow, what an awful scene to have a guy with a stretch limousine out there sitting in the locker—in the dorm talking to one of your key players, and you can't even get him out.

Mr. DONNELLY. Not only can you get him out, legality-wise he is free to come on our campus.

Mr. STEARNS. And go into the dorm like that and wake the player up and say, "This is"—

Mr. DONNELLY. They can go up and down the halls, other than knocking on the door, and then intruding on a student, that became illegal. The problem at that time was that if our athletes spent any time whatsoever face to face talking with him, then he could have been declared ineligible.

Mr. STEARNS. And you as a coach can go into that dorm and tell him to leave and he won't leave.

Mr. DONNELLY. And he had the henchman or a muscle man with him and—

Mr. STEARNS. Body guards.

Mr. DONNELLY. [continuing] they later went on to become notorious in Sports Illustrated and—

Mr. STEARNS. I understand.

Mr. DONNELLY. [continuing] ended up serving some time.

Mr. STEARNS. Okay. Thank you.

The ranking member, Mr. Towns.

Mr. TOWNS. Thank you, Mr. Chairman.

Mr. Saum, the last time you were here discussing the commercialization of amateur athletics, you stated that the NCAA has the ability to actually police itself. What brought about your change of heart?

Mr. SAUM. Change of heart in regards to this bill?

Mr. TOWNS. Yes.

Mr. SAUM. There really has never been a change in heart. We have had a great couple months working with Representative Gordon and his staff in trying to work together in creating a bill that would meet his goals and also fit into some of our experiences of intercollegiate athletics.

We found that by working with him that we could—we believe that this bill would be a very good Federal backstop to help prop up the State laws and work with our elite student athletes to assist them in working against the agents with the stories you have heard today that—and I can assure you from an angle of Coach Donnelly and Coach Osborne, I was a coach, and now my many years at the NCAA, those are very much true stories.

Mr. TOWNS. In your opinion, is there such thing as a good agent?

Mr. SAUM. Well, I have heard Coach Osborne and Coach Donnelly say that there are. I suppose it is because of my job description, I would say I haven't met very many, because I work on—as Coach Osborne said, I am kind of the cop of the agent world for the NCAA. So I have not met very many good ones.

Mr. TOWNS. How about you, Coach Donnelly?

Mr. DONNELLY. Let me add what we consider integrity of the sports agent is when we simply ask the agent, "When you contact our players, please come through us," and the good ones do that. The others are not going to do that. That is what we consider a fine agent.

Mr. TOWNS. Let me ask this question then. Do you think that paying these athletes might cut down on some of the misbehavior? I have heard of stories where an athlete's uncle or aunt dies, and they don't have the money to return home. This agent gives them the money and violates NCAA rules.

If they were paid, they would probably have the money to go home and do whatever else they wanted to do. They could get in a taxi and ride wherever they want to go and avoid a ride from somebody they shouldn't be riding with.

So what do you think about athletes being paid?

Mr. DONNELLY. Well, I am—let me say this first. We have an emergency loan situation for our student athletes now that we did not have 5 years ago, 6 years ago.

Mr. TOWNS. How does that work, Coach?

Mr. DONNELLY. It works great. It works unbelievably well for the athletes. If you do have an emergency and you need to get home, they make it home now. And you are correct, 10 years ago or so, or 8 years ago, you could not do that.

To pay an athlete, where do you start? Where do you stop? I am from basically the old school. We have got an awful lot of students

that they pay their way to go to college, and they work at the 7-Eleven, or they work at wherever, the pizza place, and they pay the money to get the education. We pay other students to come to our university to play sports.

How much money do you want in their back pocket? And the bottom line is agents will just escalate the amount of money that they are going to give. As opposed to giving X number of dollars, they are just going to move it up if a kid has got a little bit more money in their pocket.

Ninety-nine percent of your problem is they come from broken homes, they come from low economic areas, where the flash, people driving around with the stretch limos with the Mr. T starter kits around their neck, showing a lot of hundred dollar bills, impressive, 19-, 20-, 21-, 22-year old kids. And paying them X number of dollars is not going to solve our problem.

Mr. TOWNS. Mr. Saum?

Mr. SAUM. Mr. Towns, Coach Donnelly began with the explanation of the emergency student loan program, and that is not only individual campuses but that comes from the television contract. We talked about that last time we were here. There is over \$15 million in that fund, and our student athletes can ask for money to do just about anything they need that they believe is an emergency.

Our student athletes also at our Division I institutions receive their Pell money. And then, finally, we—I am happy to say that one thing that has changed since the last time that I was fortunate enough to testify here is that we now have what we call fee for lesson that has been okayed at the Division I level.

And to explain it very simply, it is where a quarterback can go out this summer and teach young kids how to throw the football and be paid for it. Now, in the past, we had a rule that prohibited basically—and, again, I am simplifying this—prohibiting the athlete to use their ability to make money during the summer. So we have now found another way that I think can be a benefit to them.

The other quick item, if you would permit me to say, is that in my experiences over the last 14 years, student athletes who have received benefits from agents didn't take meal money, laundry money, or pizza money. They are taking SUVs. They are taking women. They are taking limos, hotels, airline trips, trips to Vegas, etcetera. So paying a student athlete a nominal amount would not solve this issue at all.

Mr. TOWNS. In your testimony, Mr. Beales, you cite specific concerns, but you also give some suggestions for improving the bill. If those cited provisions were altered, would the Commission be inclined to support this legislation?

Mr. BEALES. Well, I don't think the Commission has a position either for or against the legislation. I think our threshold reservation goes to what should be examined in—to what Congress should examine in deciding about this legislation, and that is that it should look at the underlying rules that the legislation would help enforce.

Mr. TOWNS. Let me just ask one last question. I am just trying to figure out an effective way to deal with these agents. Is the penalty in the legislation harsh enough? Either one of you.

Mr. DONNELLY. I think it is a great start as opposed to where the penalties could end up. But right now, I think it gives us a little bit of teeth in being able to sit down with our athletes knowing that the agent is going to have to expose if he doesn't, and is going to end up being, if I am reading it correctly, \$11,000 for each offense each day, or whatever it may be.

It is better than what we have had it. It has not worked on the individual State level. And, again, I strongly—we need to get something enacted as quickly as we possibly can. August camps are starting. We need to go back and start pushing, because agents have been on my campus this summer. We have a couple of high-profile athletes. They have been in the dorm. They have already spoken to them, and they have the telephone numbers of the girls, aunts, uncles, cousins. They have got it all, and we need to get something out there as quickly as we possibly can.

Mr. TOWNS. Let me say this in closing. I think this is very serious, and I find it upsetting—

Mr. DONNELLY. It is serious.

Mr. TOWNS. [continuing] that both the success of a program and the career of an athlete can be jeopardized by the tampering of an unscrupulous agent. I hope that we really move forward with the legislation and clean this whole mess up. Those agents out there have to be held accountable, and I am not sure that the existing penalties are sufficient to do so.

Anyway, the bill is a step in the right direction, and I am for it.

Mr. STEARNS. I thank my colleague and recognize the gentleman from Tennessee.

Mr. GORDON. Thank you.

The last time the NCAA was here my good chairman and friend pointed out to me after the hearing that I was a little obnoxious. I think that he was more courteous and said aggressive. So let me today say, Mr. Saum, that I appreciate your cooperation and work. I think we have come up with a good product, and you have been helpful, and so, again, I thank you for that.

And, Mr. Beales, sort of understanding where you come from, I don't—I will just paraphrase. If I am off base, you can tell me. But it was—FTC has to sort of look at the big picture. You know, if there is telecommunication fraud, or whatever, and there is millions of people involved, you have got so many folks, so much time, and that is simply where you have got to put your, you know, time rather than a few hundred that might be affected with this sports agent bill.

I would point out a couple of things. One, my grandfather used to tell me that the most important road in the county was the one in front of your house. So, you know, for these kids and their parents and the schools, it is pretty important to them.

I would also point out that, really, you are a conduit, in that we are using your authority to deputize State attorney generals, and that it is really not going to be taking a lot of the FTC's time, or any for that matter. So I would point that out.

Also, you mentioned that there is already laws against—or that the FTC has authority against giving false or misleading information. That is correct. However, it is only a cease and desist, at least

on the first time out. So I think this gives more teeth and provides a number of other types of remedies.

So with that said, let me move to Coach Donnelly. Coach Donnelly, you I think made a good point, and I want to be sure that everybody understands. This is really more than the sports agents. Sports agents I guess is where it all starts, but the real problem, or everyday problem, are these runners. And they are the ones that are coming in and really causing the problems or being the closest on campus.

This legislation extends to those runners. So it is not just the sports agent, but it extends to the runners or any type of person that may be carrying their water. I wanted to point that out.

And, finally, you know, trying to—you know, again, this—everybody sort of says, “Well, golly, let us get on with this. What is—you know, why wouldn’t you do this?” I guess the best case that I can think of why you wouldn’t do this was raised the other day with me, and a sports writer said, “Well, listen, you know, these are 20-year old kids. They know the rules. You know, the coaches have told them this over and over. The NCAA tells them what they are supposed to do.” I mean, how much hand-holding, you know, do we really need to do?

So I will—if that is the best case, what is the best answer?

Mr. DONNELLY. Well, you know, I don’t know if there will ever be a best answer or an absolute answer. But regardless of whether they are 20, 21, 22, the education is there, through the universities, through the NCAA—

Mr. GORDON. I am sorry, Coach. What I mean is, what is the answer to folks that say, “Don’t pass this because these kids know what they are getting into, and we can’t hold their hand for the rest of their life”?

Mr. DONNELLY. Well, no, we can’t hold their hands for the rest of their lives, but we can continue to put the teeth into a bill that will take a 35-, 40-year old that continuously impresses, induces, lies to, whatever it may be, a 20-, 21-, 22-year old. And you have got to remember this, in my opinion: they are not going after the highly intelligent No. 1 draft choice in the country.

They are going after the people that they know that they can induce because of the socioeconomic background of which these people come from. Regardless of whether you are 22 years old, if you are living in a double-wide trailer, and you don’t have the accommodations of other people, you are going to help your mother out if you get an opportunity.

And that is where they bleed you. They go through the back door. They don’t come through the front door. “By signing with us early, we will help pay for your rent. Your mother is getting ready to be evicted.” Whatever it may be. That is tough for a 21- or 22-year old not to accept. Even—they state to them, “Even if you lose your eligibility, you are going to still be a No. 1 draft choice, No. 2, No. 3.”

Whether it materializes or not, I don’t think there is a person in here that, if you have ever been raised that way, would not understand why they take it, regardless of what and how you have educated them. It is just they have to get out of that environment. That is the quickest and easiest way to do that.

So that is the reason the teeth has to be in the bill to punish the runner and to punish the people that are trying to induce them to take what is not right.

Hopefully, I answered that correctly. I don't know.

Mr. GORDON. Thank you, sir.

I think my light went on.

Mr. STEARNS. I thank the gentleman.

The gentlelady from Colorado, Ms. DeGette.

Ms. DEGETTE. Thank you, Mr. Chairman. And first, let me apologize for my tardiness. As usual, I am double set with hearings this morning, so I was at another hearing.

I just have a couple of quick questions to follow up on some of the earlier questioning. I would like to welcome our witnesses. I know that the chairman posed the question about whether Federal legislation was really necessary to enact these kind of non-public regulations. And I am wondering if perhaps, Mr. Beales, you could address the issue of what harm there might be in enacting this type of regulation, and if there is any precedent for this that we know of.

Mr. BEALES. Well, you would have to look more closely at the rules themselves to say what harm there might be. But the potential harm is there are things that the rules prohibit, which may or may not be good things to prohibit, that you are writing into Federal law. And I think our point is that you should think about the underlying conduct that the rules restrict and not just the fact that it is an NCAA rule.

I mean, the damage to the institution, for example, of the institution getting suspended for the conduct of student athletes is a consequence of the rule. It is not a consequence of the conduct, and maybe that is a good thing, but maybe not, but that is what the question ought to be.

Ms. DEGETTE. I mean, don't we have other legislation, though, where you might want—where the actual legislation is stating the policy, and you might have to change the rules in some way to enact the policy?

Mr. BEALES. Sure. But those are usually cases where the rules are written by some governmental agency, as opposed to a private party.

Ms. DEGETTE. I see. Do you know of any other precedent where there is a law enacted that promulgates privately enacted rules? That is exactly the issue here.

Mr. BEALES. There are—not that I know of. It is conceivable that there are some. I don't know of any off the top of my head.

Ms. DEGETTE. Okay. Mr. Saum, do you know of any situations like this, where there is a statute that is basically enacting private—rules of a private organization?

Mr. SAUM. Well, my answer to that is no, but I am also not qualified to answer that question.

Mr. GORDON. If my colleague would—

Ms. DEGETTE. Happy to.

Mr. GORDON. Most recently, the Gram-Leach-Bliley legislation that we passed gave their regulators the ability to regulate within their own industry and gave them penalties to go forward with that—

Ms. DEGETTE. But those—

Mr. GORDON. [continuing] an insurance regulation.

Ms. DEGETTE. But that was over—you are exactly right.

Mr. GORDON. In other words, it gave them the Federal authority to regulate—to enforce their regulations that they put forth.

Ms. DEGETTE. Right. But the reason we did that in Gram-Leach-Bliley, as I recall—I, by the way, am not taking—

Mr. GORDON. Surely. Sure.

Ms. DEGETTE. As a matter of fact, my own State of Colorado has this law on the books. But what we did in Gram-Leach-Bliley, as I recall, because we didn't want to set up a whole new insurance regulatory agency, we allowed the current regulatory structure to stay in place. But I think that is different than just wholesale enacting these private rules that apply to student athletes, but I might be wrong, and I think that is a really good example of a place that we did it.

Let me ask both the coach and also Mr. Saum this question. You know, I understand the need to protect student athletes from unfair and deceptive acts and practices of agents. But under this legislation, colleges and universities also would be protected if this conduct occurred. And I am wondering, what is the public policy reason to do that? What is the public policy reason to protect the colleges and universities?

Mr. DONNELLY. If we find that a basketball player has signed early and that basketball team wins the NCAA Final Four, that money is returned, and it is an astronomical amount of money that they would garner from winning the championship.

The NCAA strips them of the championship. The university receives a tremendous amount of very poor publicity. The athletic director, the coach, is held responsible. The player, again, can go on and be drafted No. 1 in the NBA. He is not hurt. The money that is lost to the university, the prestige that is lost to the university, the criticism that the coach and the athletic department gets is severe.

Ms. DEGETTE. If I just may follow up on that, but—but the whole concept is we need to protect these unsophisticated athletes. Certainly, you would not argue that the colleges and universities are also—

Mr. GORDON. If you would yield, I think I can answer that. The purpose was not so much to protect the colleges and universities, but another vehicle for enforcement. In other words, certainly the colleges and universities had damages, and it would be good for them I guess to be reimbursed.

What you have is the FTC is going to say, "We don't have time to go after all of these sports agents." Other people may say, "We don't have time to go after all of these sports agents." So by virtue of giving the universities the right of action, then they can go after the agents, and that is another way to help control them. And so, really, it is not a matter of protecting universities. It is giving a right of action so you have one more policeman on the street trying to stop this activity.

Ms. DEGETTE. Right. I think the right of—reclaiming my time, I think the right of action is a good thing. But doesn't the legislation also protect them from liability?

Mr. GORDON. No. If you would yield, no. I don't think it protects them from liability. It gives them a right of action to collect damages.

Ms. DEGETTE. Okay. All right.

Mr. GORDON. And so that is what—you know, and, again, I think those damages are real. But the purpose—the real purpose in this really is more the additional policemen than it is to protect the university.

Ms. DEGETTE. That is not how I read the bill, but I will take your assurances, Mr. Gordon.

Thank you, and I will yield back.

Mr. STEARNS. Yields back. Would my colleagues—any other questions that they would have?

If not, let me just sum up and thank the witnesses. Mr. Beales, I think I am trying to sort of sum up what you said when you said your extensive enforcement and oversight history with self-regulatory industries, organization, you sort of counseled the committee to use caution before Congress enacts Federal legislation to support or endorse specific non-public regulation. I think that sort of sums up what you say—to use caution.

Mr. BEALES. I think that is a fair summary. Many times those private restrictions are very useful and very good, and sometimes they are not.

Mr. STEARNS. Yes. But wouldn't you also agree that if Congress deems a specific non-public regulation good public policy, it could actually codify such regulation?

Mr. BEALES. Sure. If indeed it deems it good public policy, but that I think is the question.

Mr. STEARNS. Yes. So I think that is where perhaps our hearing sort of hinges on, and that is where we are at.

Yes?

Mr. GORDON. Just one final thing. Let me just say that I am thoroughly convinced that this legislation is done for the right reasons and will be helpful. But also, let me point out that all wisdom doesn't originate immediately, even sometimes with me, and that the purpose of these hearings is to bring additional information, and I think we are going to have a better bill because of the questions that Ms. DeGette has asked and that Mr. Beales has brought forward. We want to take these things in and try to have a better bill.

We are also somewhat handcuffed by—you are somewhat pushing from behind in trying to get a remedy for these kind of problems. And so it is not the cleanest way, but I think it is a way—it is the best way within the tools that we have. So, again, we are listening to all that you have to say. And because of that, I think we are going to have a better bill. And certainly, I think this is going to benefit our country and a lot of individuals.

Ms. DEGETTE. Let me just say—

Mr. STEARNS. Yes.

Ms. DEGETTE. [continuing] add my 2 cents, Mr. Chairman. I also support the legislation. I just want to make sure that we write it as narrowly as possible to achieve the intended goal. One thing I have learned in my years in legislative services is about the law of unintended consequences. Talking about Gram-Leach-Bliley, for

example, you know, we are still dealing with the fallout from that bill.

I really want to thank the sponsors for bringing it up, and I do think it is a growing problem in college athletics and one we need to deal with.

Mr. STEARNS. I thank the gentlelady. And thank you for your patience while we had to go vote.

The hearing is adjourned.

[Whereupon, at 12:14 p.m., the subcommittee was adjourned.]

DOCUMENT NO. 22



CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

October 4, 2002

H.R. 4701
Sports Agent Responsibility and Trust Act

*As ordered reported by the House Committee on Energy and Commerce
on September 25, 2002*

H.R. 4701 would impose certain restrictions on contracts between sports agents and student athletes. For example, the bill would prohibit sports agents from making false promises or offering gifts to solicit such a contract. These new rules would be enforced by the Federal Trade Commission (FTC) through civil penalties and by the states.

CBO estimates that enacting H.R. 4701 would not have a significant impact on the federal budget. Based on information from the FTC, CBO expects that enforcing H.R. 4701 would take place mostly at the state level. Therefore, CBO expects that any increase in civil penalties resulting from the enactment of H.R. 4701 would be insignificant. (Such penalties are recorded in the budget as revenues.) Similarly, we estimate that implementing H.R. 4701 would increase the FTC's costs by less than \$500,000 annually, assuming the availability of appropriations.

H.R. 4701 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

H.R. 4701 would impose private-sector mandates, as defined by UMRA, on certain sports agents and student athletes. CBO estimates that the direct costs of the mandates would fall well below the annual threshold established by UMRA for private-sector mandates (\$115 million in 2002, adjusted annually for inflation).

In general, H.R. 4701 would prohibit sports agents from recruiting or soliciting a student athlete by giving any false or misleading information or making a false promise or representation. H.R. 4701 would prohibit a sports agent from providing anything of value to a student athlete or anyone associated with the athlete before entering into a contract. An agent also would be required to provide a student athlete with a specific disclosure document before entering into an agency contract and could not predate or postdate such a contract. The bill also would require a student athlete, or the athlete's parents or legal guardian if the

student is under the age of 18, to sign the disclosure document prior to entering into an agency contract. In addition, the bill would require the sports agent and student athlete to each inform the student's educational institution within a specific time that the athlete has entered into an agency contract. Based on information from government sources, CBO estimates that the direct cost of the mandates would fall well below the annual threshold established by UMRA for private-sector mandates.

The CBO staff contacts for this estimate are Ken Johnson (for federal costs), Angela Seitz (for the state and local impact), and Paige Piper/Bach (for the private-sector impact). The estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

DOCUMENT NO. 23



CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

January 31, 2003

H.R. 361
Sports Agent Responsibility and Trust Act

*As ordered reported by the House Committee on Energy and Commerce
on January 29, 2003*

H.R. 361 would impose certain restrictions on contracts between sports agents and student athletes. For example, the bill would prohibit sports agents from soliciting such a contract by making false promises or offering gifts. These new rules would be enforced by the Federal Trade Commission (FTC) through civil penalties and by the states.

CBO estimates that enacting H.R. 361 would not have a significant impact on the federal budget. Based on information from the FTC, CBO expects that enforcement of the bill would occur mostly at the state level. Therefore, CBO expects that any increase in civil penalties resulting from the enactment of H.R. 361 would be insignificant. (Such penalties are recorded in the budget as revenues.) Similarly, we estimate that implementing H.R. 361 would increase the FTC's costs by less than \$500,000 annually, assuming the availability of appropriated funds.

H.R. 361 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

H.R. 361 would impose private-sector mandates as defined by UMRA on certain sports agents and student athletes. The bill would prohibit a sports agent from providing anything of value to a student athlete or anyone associated with the athlete before entering into a contract. An agent also would be required to provide a student athlete with a specific disclosure document before entering into an agency contract and could not predate or postdate such a contract. The bill would require a student athlete, or the athlete's parents or legal guardian if the student is under the age of 18, to sign the disclosure document prior to entering into an agency contract. In addition, the bill would require the sports agent and student athlete to each inform the student's educational institution within a specific time frame that the athlete has entered into an agency contract. Based on information from government sources, CBO estimates that the direct cost of those mandates would fall well below the annual threshold established by UMRA for private-sector mandates (\$117 million in 2003, adjusted annually for inflation).

The CBO staff contacts for this estimate are Ken Johnson (for federal costs), Victoria Heid Hall (for the state and local impact), and Paige Piper/Bach (for the private-sector impact). The estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

DOCUMENT NO. 24



CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

May 28, 2003

H.R. 361
Sports Agent Responsibility and Trust Act

As ordered reported by the House Committee on the Judiciary on May 21, 2003

H.R. 361 would impose certain restrictions on contracts between sports agents and student athletes. For example, the bill would prohibit sports agents from soliciting such a contract by making false promises or offering gifts. These new rules would be enforced by the Federal Trade Commission (FTC) through civil penalties and by the states.

CBO estimates that enacting H.R. 361 would not have a significant impact on the federal budget. Based on information from the FTC, CBO expects that enforcement of the bill would occur mostly at the state level. Therefore, CBO expects that any increase in civil penalties resulting from the enactment of H.R. 361 would be insignificant. (Such penalties are recorded in the budget as revenues.) Similarly, we estimate that implementing H.R. 361 would increase the FTC's costs by less than \$500,000 annually, assuming the availability of appropriated funds.

H.R. 361 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

H.R. 361 would impose private-sector mandates as defined by UMRA on certain sports agents and student athletes. The bill would prohibit a sports agent from providing anything of value to a student athlete or anyone associated with the athlete before entering into a contract. An agent also would be required to provide a student athlete with a specific disclosure document before entering into an agency contract and could not predate or postdate such a contract. The bill would require a student athlete, or the athlete's parents or legal guardian if the student is under the age of 18, to sign the disclosure document prior to entering into an agency contract. In addition, the bill would require the sports agent and student athlete to each inform the student's educational institution within a specific

time frame that the athlete has entered into an agency contract. Based on information from government sources, CBO estimates that the direct cost of those mandates would fall well below the annual threshold established by UMRA for private-sector mandates (\$117 million in 2003, adjusted annually for inflation).

On January 31, 2003, CBO transmitted a cost estimate for H.R. 361 as ordered reported by the House Committee on Energy and Commerce on January 29, 2003. The two versions of the bill are similar, and the cost estimates are identical.

The CBO staff contacts for this estimate are Julie Middleton (for federal costs), Victoria Heid Hall and Gregory Waring (for the state and local impact), and Paige Piper/Bach (for the private-sector impact). The estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

ALABAMA

Ala. Code § 8-26A-1 to § 8-26A-31

§ 8-26A-1. Short title.

This chapter may be cited as the Alabama Uniform Athlete Agents Act.

§ 8-26A-2. Definitions.

In this chapter the following words have the following meanings:

(1) **AGENCY CONTRACT.** 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.** 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 legal guardian of the student-athlete or an individual acting solely on behalf of a professional sports team or professional sports organization.

(3) **ATHLETIC DIRECTOR.** 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) **COMMISSION.** The Alabama Athlete Agents Commission.

(5) **CONTACT.** A communication, direct or indirect, between an athlete agent and a student-athlete, to recruit or solicit the student-athlete to enter into an agency contract.

(6) **ENDORSEMENT CONTRACT.** 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.

(7) **INTERCOLLEGIATE SPORT.** 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.

(8) PERSON. 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.

(9) PROFESSIONAL-SPORTS-SERVICES CONTRACT. 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.

(10) RECORD. Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(11) REGISTRATION. Registration as an athlete agent pursuant to this chapter.

(12) STATE. 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.

(13) STUDENT-ATHLETE. 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.

§ 8-26A-3. Administration; service of process; subpoenas.

- (a) The Secretary of State, subject to rules promulgated by the commission, shall administer this chapter.
- (b) By acting as an athlete agent in this state, a nonresident individual submits to the jurisdiction of the Secretary of State, the commission, and the courts of this state. Process may be served on an athlete agent in accordance with the Alabama Rules of Civil Procedure.
- (c) The commission or the Secretary of State, or both, may issue subpoenas for any material that is relevant to the administration of this chapter.

§ 8-26A-4. Athlete agents; registration required; void contracts.

- (a) Except as otherwise provided in subsection (b), an individual may not act as an athlete agent in this state without holding a certificate of registration under Section 8-26A-6 or Section 8-26A-8.

- (b) Before being issued a certificate of registration, an individual may act as an athlete agent in this state for all purposes except signing an agency contract, if both of the following occur:
 - (1) A student-athlete or another person acting on behalf of the student-athlete initiates communication with the individual.
 - (2) Within 14 days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in this state.
- (c) An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract.

§ 8-26A-5. Registration as athlete agent; form; requirements.

- (a) An applicant for registration shall submit an application for registration to the Secretary of State in a form prescribed by the Secretary of State. The application shall be in the name of an individual and, except as otherwise provided in subsection (b), signed or otherwise authenticated by the applicant under penalty of perjury and shall state or contain all of the following:
 - (1) The name of the applicant and the address of the applicant's principal place of business.
 - (2) The name of the applicant's business or employer, if applicable.
 - (3) Any business or occupation engaged in by the applicant for the five years next preceding the date of submission of the application.
 - (4) A description of the applicant's:
 - a. Formal training as an athlete agent.
 - b. Practical experience as an athlete agent.
 - c. Educational background relating to the applicant's activities as an athlete agent.
 - (5) The names and addresses of three individuals not related to the applicant who are willing to serve as references.
 - (6) The name, sport, and last known team for each individual for whom the applicant acted as an athlete agent during the five years next preceding the date of submission of the application.
 - (7) The names and addresses of all persons who are:

- a. With respect to the athlete agent's business if it is not a corporation, the partners, members, officers, managers, associates, or profit-sharers of the business.
 - b. With respect to a corporation employing the athlete agent, the officers, directors, and any shareholder of the corporation having an interest of five percent or greater.
- (8) Whether the applicant or any person named pursuant to subdivision (7) has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony, and identify the crime.
- (9) Whether there has been any administrative or judicial determination that the applicant or any person named pursuant to subdivision (7) has made a false, misleading, deceptive, or **fraudulent** representation.
- (10) Any instance in which the conduct of the applicant or any person named pursuant to subdivision (7) resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or educational institution.
- (11) Any sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to subdivision (7) arising out of occupational or professional conduct.
- (12) Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any person named pursuant to subdivision (7) as an athlete agent in any state.
- (b) An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another state, may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to subsection (a). The Secretary of State shall accept the application and the certificate from the other state as an application for registration in this state if the application to the other state meets all of the following criteria:
 - (1) It 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) It contains information substantially similar to or more comprehensive than that required in an application submitted in this state.
 - (3) It was signed by the applicant under penalty of perjury.

§ 8-26A-6. Certificate of registration; issuance or denial; renewal.

- (a) Except as otherwise provided in subsection (b), the Secretary of State shall issue a certificate of registration to an individual who complies with subsection (a) of Section 8-26A-5 or whose application has been accepted under subsection (b) of Section 8-26A-5.
- (b) The Secretary of State may refuse to issue a certificate of registration if the Secretary of State determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent.
- (c) In making the determination under subsection (b), the Secretary of State may consider, without limitation, whether the applicant has done any of the following:
 - (1) Been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony.
 - (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 8-26A-14.
 - (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.
 - (7) Engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty, or integrity.
- (d) In making a determination under subsection (b), the Secretary of State shall consider all of the following:
 - (1) How recently the conduct occurred.
 - (2) The nature of the conduct and the context in which it occurred.
 - (3) Any other relevant conduct of the applicant.
- (e) An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the Secretary of State. 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.

- (f) 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 (e), may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. The Secretary of State 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 meets all of the following criteria:
 - (1) It 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) It contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this state.
 - (3) It was signed by the applicant under penalty of perjury.
- (g) A certificate of registration or a renewal of a registration is valid for two years.
- (h) A denial of a certificate of registration may be appealed to the commission in accordance with the Alabama Administrative Procedure Act. The following rules apply to an appeal under this subsection.
 - (1) In the event that proper notice of appeal is given to the Secretary of State, the Secretary of State shall forward the file to the Chief Administrative Law Judge of the Central Panel of Administrative Law Judges in the office of the Attorney General, along with a request that an administrative law judge be assigned to conduct the hearing of the requested appeal.
 - (2) The administrative law judge designated to hear the appeal shall proceed to give notice of the hearing under the Administrative Procedure Act. The administrative law judge shall conduct the hearing and provide the commission with proposed findings of fact, conclusions of law, and a recommendation.
 - (3) Upon receipt of the report of the administrative law judge along with the file and record of the appeal, the commission may adopt, alter, or reject the proposed findings of the administrative law judge and issue the final order.
 - (4) The final order of the commission may be appealed to the circuit court under the terms and standards set out in the Administrative Procedure Act.

- (5) Costs incurred by the state for any appeal to the commission shall be paid by the Secretary of State from monies appropriated for the implementation of this chapter.

§ 8-26A-7. Suspension, revocation, or refusal to renew registration.

- (a) The Secretary of State may propose to suspend, revoke, or refuse to renew a registration for conduct that would have justified denial of registration under subsection (b) of Section 8-26A-6. If not appealed, the proposed action of the Secretary of State is final after 14 days.
- (b) A proposed suspension, revocation, or refusal to renew a certificate of registration may be appealed to the commission in accordance with the Alabama Administrative Procedure Act. The following rules apply to an appeal under this subsection.
 - (1) In the event that proper notice of appeal is given to the Secretary of State, the Secretary of State shall forward the file to the Chief Administrative Law Judge of the Central Panel of Administrative Law Judges in the office of the Attorney General, along with a request that an administrative law judge be assigned to conduct the hearing of the requested appeal.
 - (2) The administrative law judge designated to hear the appeal shall proceed to give notice of the hearing under the Administrative Procedure Act. The administrative law judge shall conduct the hearing and provide the commission with proposed findings of fact, conclusions of law, and a recommendation.
 - (3) Upon receipt of the report of the administrative law judge along with the file and record of the appeal, the commission may adopt, alter, or reject the proposed findings of the administrative law judge and issue the final order.
 - (4) The final order of the commission may be appealed to the circuit court under the terms and standards set out in the Administrative Procedure Act.
 - (5) Costs incurred by the state for any appeal to the commission shall be paid by the Secretary of State from monies appropriated for the implementation of this chapter.

§ 8-26A-8. Temporary registration.

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

§ 8-26A-9. Registration and renewal fees.

An application for registration or renewal of registration shall be accompanied by a fee in the following amount:

- (1) Two hundred dollars (\$200) for an initial application for registration.
- (2) One hundred dollars (\$100) for an application for registration based upon a certificate of registration or licensure issued by another state.
- (3) One hundred dollars (\$100) for an application for renewal of registration.
- (4) One hundred dollars (\$100) for an application for renewal of registration based upon an application for renewal of registration or licensure submitted in another state.

§ 8-26A-10. 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 state or contain all of the following:
 - (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.
 - (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 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, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, OR BEFORE THE NEXT SCHEDULED ATHLETIC EVENT IN WHICH YOU MAY PARTICIPATE, WHICHEVER OCCURS FIRST, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND
 - (3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.
- (d) An agency contract that does not conform to this section is voidable by the student-athlete. If a student-athlete voids an agency contract, the student-athlete is not required to pay 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.
- (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.

§ 8-26A-11. Notice of contract to educational institution.

- (a) Within 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 the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.
- (b) Within 72 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.

§ 8-26A-12. Student-athlete's right to cancel.

- (a) A student-athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within 14 calendar days after the contract is signed.
- (b) A student-athlete may not waive the right to cancel an agency contract.

- (c) If a student-athlete cancels an agency contract, the student-athlete is not required to pay 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.

§ 8-26A-13. Required records.

- (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) Any agency contract entered into by the athlete agent.
 - (3) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract.
- (b) Records required by subsection (a) to be retained are open to inspection by the Secretary of State or the commission during normal business hours.

§ 8-26A-14. Prohibited conduct.

- (a) An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, may not do any of the following:
 - (1) Give any materially false or misleading information or make a materially false promise or representation.
 - (2) Furnish, directly or indirectly, any thing of value to a student-athlete before the student-athlete enters into the agency contract.
 - (3) Furnish, directly or indirectly, any thing of value to any individual other than the student-athlete or another registered athlete agent.
- (b) An athlete agent may not intentionally do any of the following:
 - (1) Initiate contact with a student-athlete unless registered under this chapter.
 - (2) Refuse to permit inspection of the records required to be retained by Section 8-26A-13.
 - (3) Fail to register when required by Section 8-26A-4.
 - (4) Provide materially false or misleading information in an application for registration or renewal of registration.
 - (5) Predate or postdate an agency contract.

- (c) An athlete agent may not fail to notify a student-athlete before the student-athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate as a student-athlete in that sport.
- (d) A student-athlete or former student-athlete may not do either of the following:
 - (1) Fail to give the notification to the athletic director of the educational institution at which the student-athlete or former student-athlete is enrolled that he or she has entered into an agency contract.
 - (2) Accept anything from an athlete agent without first entering into a contract in conformity with this chapter.

§ 8-26A-15. Criminal penalties.

- (a) The commission of any conduct prohibited by an athlete agent in and who has intentionally not registered under this chapter is a Class B felony.
- (b) Except for subdivision (1) of subsection (b) of Section 8-26A-14, the commission of any conduct prohibited by an athlete agent in Section 8-26A-14 is a Class C felony.
- (c) The commission of any conduct prohibited by an athlete agent in subdivision (1) of subsection (b) of Section 8-26A-14 is a Class A misdemeanor.
- (d) The commission of any conduct prohibited by a student-athlete in Section 8-26A-14 is a Class A misdemeanor, and in addition to penalties otherwise prescribed by law, an individual having been convicted shall perform a minimum of 70 hours of community service.

§ 8-26A-16. Civil remedies.

- (a) An educational institution has a right of action against an athlete agent, student-athlete, or a former student-athlete for damages caused by a violation of this chapter. In an action under this section, the court may award to the prevailing party costs and reasonable attorney's fees.
- (b) Damages of an educational institution under subsection (a) include losses and expenses incurred because, as a result of the conduct of an athlete agent, student-athlete, or former student-athlete, 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 under 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, student-athlete, or former student-athlete.
- (d) Any liability of the athlete agent, student-athlete, or the former student-athlete under this section is several and not joint.
- (e) This chapter does not restrict rights, remedies, or defenses of any person under law or equity.

§ 8-26A-17. Administrative penalty.

- (a) The Secretary of State, with concurrence of the Attorney General, may assess an administrative penalty against an athlete agent not to exceed twenty-five thousand dollars (\$25,000) for each violation of this chapter.
- (b) The assessment of an administrative penalty may be appealed to the commission in accordance with the Alabama Administrative Procedure Act. The following rules apply to an appeal under this subsection.
 - (1) In the event that proper notice of appeal is given to the Secretary of State, the Secretary of State shall forward the file to the Chief Administrative Law Judge of the Central Panel of Administrative Law Judges in the office of the Attorney General, along with a request that an administrative law judge be assigned to conduct the hearing of the requested appeal.
 - (2) The administrative law judge designated to hear the appeal shall proceed to give notice of the hearing under the Administrative Procedure Act. The administrative law judge shall conduct the hearing and provide the commission with proposed findings of fact, conclusions of law, and a recommendation.
 - (3) Upon receipt of the report of the administrative law judge along with the file and record of the appeal, the commission may adopt, alter, or reject the proposed findings of the administrative law judge and issue the final order.
 - (4) The final order of the commission may be appealed to the circuit court under the terms and standards set out in the Administrative Procedure Act.

- (5) Costs incurred by the state for any appeal to the commission shall be paid by the Secretary of State from monies appropriated for the implementation of this chapter.

§ 8-26A-18. Uniformity of application and construction.

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

§8-26A-30. Alabama Athlete Agents Regulatory Commission.

(a) The Alabama Athlete Agents Regulatory Commission is continued in existence as the Alabama Athlete Agents Commission. The commission shall consist of the Secretary of State and 18 members to be appointed as follows:

- (1) One member appointed by the Governor.
- (2) One member appointed by the Lieutenant Governor.
- (3) One member appointed by the Speaker of the House of Representatives.
- (4) The athletic director or an individual appointed by the athletic director at each of the following institutions of higher education:
 - a. Auburn University.
 - b. University of Alabama, Tuscaloosa.
 - c. University of South Alabama.
 - d. Alabama State University.
 - e. Alabama A & M University.
 - f. Tuskegee University.
 - g. Troy State University.
 - h. Jacksonville State University.
 - i. University of North Alabama.
 - j. University of West Alabama.
 - k. Miles College.
 - l. University of Montevallo.
 - m. University of Alabama, Huntsville.
 - n. University of Alabama, Birmingham.
- (5) One member appointed by the Alabama High School Athletic Association.

(b) In appointing members to the board, the appointing power shall select those persons whose appointments, to the extent possible, ensure that

the membership of the board is inclusive and reflects the racial, gender, urban/rural, and economic diversity of the state. All appointed members of the commission shall be citizens of the United States and residents of Alabama. The term of each appointed commission member shall be three years and members are eligible for reappointment. If a vacancy occurs, the appointing power for the vacant position shall appoint a successor who shall take office immediately and serve the remainder of the unexpired term. Members of the Alabama Athlete Agents Regulatory Commission serving on October 1, 2001, shall continue to serve on the Alabama Athlete Agents Commission until their term expires.

- (c) Within 15 days after their appointment, the members of the commission shall take an oath before any person lawfully authorized to administer oaths in this state to faithfully and impartially perform their duties as members of the commission, and the same shall be filed with the Secretary of State.
- (d) The Governor may remove from the commission any appointed member for neglect of duty or other just cause.
- (e) The commission shall elect annually a chairperson, a vice chairperson, and a secretary-treasurer from its members.
- (f) A majority of the commission shall constitute a quorum for the transaction of business.
- (g) The Secretary of State shall keep records of the proceedings of the commission; and, in any proceeding in court, civil or criminal, arising out of or founded upon any provision of this chapter, copies of those records certified as correct by the Secretary of State shall be admissible in evidence as tending to prove the content of the records.
- (h) The Secretary of State shall have printed and published for distribution an annual register which shall contain the names, arranged alphabetically, of all persons registered under this chapter. The Secretary of State shall also provide a quarterly report to the commission of all agents registered during the quarter, any suspension or revocation of registered agents during the quarter, and other disciplinary action taken against an agent.
- (i) The Secretary of State may employ personnel and arrange for assistance, service, and supplies as the Secretary of State may require for the performance of the duties of the commission.
- (j) The commission may promulgate, and from time to time, amend rules and standards of conduct for athlete agents appropriate for the protection of the residents of the state. At least 35 days prior to the completion of notice of any rule or amendment, the Secretary of State shall

mail copies of the proposed rule or amendment to all persons registered under this chapter, with a notice advising them of the completion of notice of the rule or amendment and requesting that they submit advisory comments thereon at least 15 days prior to the completion of notice. Failure to receive by mail a rule, amendment, or notice by all persons registered under this chapter shall not affect the validity of the rule or amendment.

- (k) Except for the Secretary of State, each member of the commission, who is not otherwise reimbursed by public funds for services provided to this commission, shall be paid fifty dollars (\$50) for each day the member is actively engaged in the discharge of official duties as a member of the commission, and shall also be entitled to, and shall receive, reimbursement for actual necessary expenses incurred in the discharge of official duties on behalf of the commission.

The Alabama Athlete Agents Commission shall be subject to the Alabama Sunset Law, Chapter 20, Title 41, as an enumerated agency as provided in Section 41-20-3, and shall have a termination date of October 1, 2003, and every four years thereafter, unless continued pursuant to the Alabama Sunset Law.

§ 8-26A-31. Disposition of moneys and fines collected; Alabama Athlete Agents Fund.

- (a) All moneys collected for registrations and all fines collected for violations of this chapter shall be paid to the Secretary of State, who shall deposit them in a special fund in the State Treasury for the use of the commission.
- (b) There is hereby created in the State Treasury a fund to be known and designated as the Alabama Athlete Agents Fund. All funds, fees, charges, costs, and collections accruing to or collected under the provisions of this chapter shall be deposited into the State Treasury to the credit of the Alabama Athlete Agents Fund.
- (c) Funds now or hereafter deposited in the State Treasury to the credit of the Alabama Athlete Agents Fund may not be expended for any purpose whatsoever unless the same shall have been allotted and budgeted in accordance with Article 4 of Chapter 4 of Title 41, and only in the amounts and for the purposes provided by the Legislature in the general appropriation bill or other appropriation bills.

ARIZONA

Ariz. Rev. Stat. Ann. § 15-1761 to § 15-1776 (2002)

§ 15-1761. Short title.

This article may be cited as the Uniform Athlete Agents Act.

§ 15-1762. Definitions.

In this article, unless the context otherwise requires:

1. “Agency contract” means an agreement in which a student athlete authorizes a person to negotiate or solicit a professional sports services contract or an endorsement contract on behalf of the student athlete.

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. Athlete agent includes an individual who represents to the public that the individual is an athlete agent. Athlete agent 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 a professional sports organization.

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.

4. “Contact” means a direct or indirect communication between an athlete agent and a student athlete to recruit or solicit the student athlete to enter into an agency contract.

5. “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 generate because of publicity, reputation, following or fame that was obtained because of athletic ability or performance.

6. “Intercollegiate sport” means a sport that is played at the collegiate level and for which eligibility requirements for participation by a student

athlete are established by a national association for the promotion or regulation of collegiate athletics.

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

8. "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. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic format or any other medium and that is retrievable in perceivable form.

10. "Registration" means registration as an athlete agent pursuant to this article.

11. "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.

12. "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.

§ 15-1763. Service of process; subpoenas.

- A. By acting as an athlete agent in this State, a nonresident individual constructively appoints the Secretary of State as the individual's agent for service of process in any civil action in this State related to the individual's athlete agent activities in this State.
- B. The Secretary of State may issue subpoenas for any material that is relevant to the administration of this article.

§ 15-1764. Athlete agents; registration; void contracts.

- A. Except as otherwise provided in subsection b of this section, an individual may not act as an athlete agent in this State without holding a certificate of registration under Section 15-1766 or 15-1768.

- B. Before being issued a certificate of registration, an individual may act as an athlete agent in this state for all purposes other than signing an agency contract, if both:
 - 1. A student athlete or another person acting on behalf of the student athlete initiates communication with the individual.
 - 2. Within seven days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in this State.
- C. An agency contract resulting from conduct in violation of this section is void, and the athlete agent shall return any consideration received under the contract.

§ 15-1765. Registration as athlete agent; form; requirements.

- A. An applicant for registration as an athlete agent shall submit an application for registration to the Secretary of State in a form prescribed by the Secretary of State. An application filed under this section is a public record under title 39. [FN1] The application shall be in the name of an individual and, except as otherwise provided in subsection b of this section, shall be signed or otherwise authenticated by the applicant under penalty of perjury. The application shall state or contain the following:
 - 1. The name of the applicant and the address of the applicant's principal place of business.
 - 2. The name of the applicant's business or employer, if applicable.
 - 3. Any business or occupation engaged in by the applicant for the five years immediately preceding the date of the submission of the application.
 - 4. A description of the applicant's:
 - (a) Formal training as an athlete agent.
 - (b) Practical experience as an athlete agent.
 - (c) Educational background relating to the applicant's activities as an athlete agent.
 - 6. The name, sport and last known team of each individual for whom the applicant acted as an athlete agent during the five years immediately preceding the date of the submission of the application.
 - 7. The names and addresses of all persons who are:

- (a) With respect to the athlete agent's business if it is not a corporation, the partners, members, officers, managers, associates or profit sharers of the business.
 - (b) With respect to a corporation employing the athlete agent, the officers, the directors and any shareholder of the corporation that has an ownership interest of five per cent or more in the corporation.
 8. Whether the applicant or any person named pursuant to paragraph 7 of this subsection has been convicted of a crime that, if committed in this State, would be a crime involving moral turpitude or a felony. If the applicant gives an affirmative response to the information requested pursuant to this paragraph, the applicant shall list each specific criminal conviction.
 9. Whether there has been any administrative or judicial determination that the applicant or any person named pursuant to paragraph 7 of this subsection has made a false, misleading, deceptive or **fraudulent** representation.
 10. Any instance in which the conduct of the applicant or any person named pursuant to paragraph 7 of this subsection resulted in the imposition on a student athlete or an educational institution of a sanction, suspension or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event.
 11. Any sanction, suspension or disciplinary action that was taken against the applicant or any person named pursuant to paragraph 7 of this subsection and that arose out of occupational or professional misconduct.
 12. Whether there has been any denial of an application for, suspension or revocation of or refusal to renew the registration or licensure of the applicant or any person named pursuant to paragraph 7 of this subsection as an athlete agent in any State.
- B. An individual who has submitted an application for and holds a certificate of registration or licensure as an athlete agent in another State may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to subsection a. The Secretary of State shall accept the application and the certificate from the other State as an application for registration in this State if the application to the other State meets all of the following requirements:
1. Was submitted in the other State within the six months immediately preceding the submission of the application in this State and

the applicant certifies that the information contained in the application is current and correct.

2. Contains information that is substantially similar to or more comprehensive than that required in an application submitted in this State.
3. Was signed by the applicant under penalty of perjury.

§ 15-1766. Certificate of registration; issuance or denial; renewal.

- A. Except as otherwise provided in subsection B of this section, the Secretary of State shall issue a certificate of registration to an individual who complies with Section 15-1765, subsection a or whose application has been accepted under Section 15-1765, subsection B.
- B. The Secretary of State may refuse to issue a certificate of registration if the Secretary of State determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the Secretary of State may consider whether the applicant has:
 1. Been convicted of a crime that, if committed in this State, would be a crime involving moral turpitude or would be a felony.
 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 that is prohibited by Section 15-1774.
 5. Has had a registration or licensure as an athlete agent suspended, revoked or denied or has been refused renewal of registration or licensure as an athlete agent in any State.
 6. Engaged in conduct that resulted in a sanction, suspension or declaration of ineligibility to participate being imposed on a student athlete or an educational institution in an interscholastic or an intercollegiate athletic event.
 7. Engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty or integrity.
- C. In making a determination under subsection B of this section, the Secretary of State shall consider all of the following:
 1. The time between the conduct that occurred and the date of the application.
 2. The nature of the conduct and the context in which the conduct occurred.

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 Secretary of State. An application for renewal that is filed pursuant to this subsection is a public record under title 39. [FN1] The application for renewal shall be signed by the applicant under penalty of perjury and must contain current information concerning 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 of this section, may file a copy of the application for renewal and a valid certificate of registration or licensure from the other State. The Secretary of State 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 meets all of the following requirements:
 1. Was submitted in the other State within the six months immediately preceding the filing in this State and the applicant certifies the information contained in the application for renewal is current and correct.
 2. Contains information that is substantially similar to or more comprehensive than that required in an application for renewal submitted in this State.
 3. Was signed by the applicant under penalty of perjury.
 - F. A certificate of registration or a renewal of a registration is valid for two years from the date of issuance.

§ 15-1767. Suspension, revocation or refusal to renew registration.

- A. The Secretary of State may suspend, revoke or refuse to renew a registration for conduct that would have justified denial of registration under Section 15-1766, subsection B.
- B. The Secretary of State may deny, suspend, revoke or refuse to renew a certificate of registration only after proper notice and an opportunity for a hearing pursuant to title 41, chapter 6. [FN1]

§ 15-1768. Temporary registration.

The Secretary of State may issue a temporary certificate of registration while an application for registration or renewal of registration pursuant to this article is pending.

§ 15-1769. Registration and renewal fees.

An application for registration or renewal of registration shall be accompanied by the payment to the secretary of state of a fee in the following amounts:

1. For an initial application for registration, twenty dollars.
2. For an application for registration based on a certificate of registration or licensure issued by another State, twenty dollars.
3. For an application for renewal of registration, twenty dollars.
4. For an application for renewal of registration based on an application for renewal of registration or licensure submitted in another State, twenty dollars.

§ 15-1770. Required form of contract.

- A. An agency contract shall be a record that is signed or otherwise authenticated by the parties.
- B. An agency contract shall state or contain the following:
 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 who is not listed in the application for registration or renewal of registration and 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 the athlete agent.
 4. A description of the services to be provided to the student athlete.
 5. The duration of the contract.
 6. The date of the execution of the contract.
- C. An agency contract shall contain, in close proximity to the signature of the student athlete, a conspicuous notice in bold-faced type in capital letters that states the following:

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 AFTER ENTERING INTO THIS CONTRACT OR BEFORE THE NEXT ATHLETIC EVENT IN WHICH THE STUDENT ATHLETE MAY PARTICIPATE, WHICHEVER COMES FIRST, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR.
 3. YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.
- D. An agency contract that does not conform to this section is voidable by the student athlete. If a student athlete voids an agency contract, the student athlete is not required to pay any consideration under the contract or to return any consideration that was received from the athlete agent and that was given to induce the student athlete to enter into the contract.
- E. The athlete agent shall give a copy of the signed or otherwise authenticated agency contract to the student athlete at the time of execution.

§ 15-1771. Notice to educational institution.

- 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 educational institution at which 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.

§ 15-1772. Student athlete's right to cancel contract.

- A. A student athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within fourteen days after the contract is signed.
- B. A student athlete may not waive the right to cancel an agency contract.
- C. If a student athlete cancels an agency contract, the student athlete is not required to pay 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.

§ 15-1773. Required records.

- A. An athlete agent shall retain all of the following records for a period of five years:
 - 1. The name and address of each individual represented by the athlete agent.
 - 2. Any agency contract entered into by the athlete agent.
 - 3. Documentation of any direct costs incurred by the athlete agent in the recruitment or solicitation of a student athlete to enter into an agency contract.
- B. The Records required to be retained pursuant to subsection a shall be open to inspection by the Secretary of State during normal business hours.

§ 15-1774. Prohibited conduct; violation; classification.

- A. It is unlawful for An athlete agent, with the intent to induce a student athlete to enter into an agency contract, to engage in any of the following conduct:
 - 1. Give any 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.
 - 3. Furnish anything of value to any individual other than the student athlete or another registered athlete agent.
- B. It is unlawful for An athlete agent to intentionally commit any of the following conduct:

1. Initiate contact with a student athlete unless the athlete agent is registered with the secretary of state pursuant to this article.
 2. Refuse or fail to retain or permit inspection of the records required to be retained by Section 15-1773.
 3. Fail to register if required by Section 15-1764.
 4. Provide materially false or misleading information in an application for registration or renewal of registration.
 5. Predate or postdate an agency contract.
 6. Fail to notify a student athlete before the student athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student athlete ineligible to participate as a student athlete in that sport.
- C. A person who violates this section is guilty of a class 1 misdemeanor.

§ 15-1775. Civil remedies.

- A. An educational institution may bring a cause of action against an athlete agent or a former student athlete for damages caused by a violation of this article. The court may award to the prevailing party costs and reasonable attorney fees in any action brought pursuant to this section.
- B. An educational institution may recover damages pursuant to subsection a including losses and expenses incurred as a result of the conduct of an athlete agent or a former student athlete if the educational institution was injured by a violation of this article 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 under this section does not accrue until the educational institution discovers or by the exercise of reasonable diligence should have discovered the violation by the athlete agent or the former student athlete.
- D. Any liability of the athlete agent or the former student athlete under this section is several and not joint.
- E. This article does not restrict other legal or equitable rights, remedies or defenses of any person.

§ 15-1776. Administrative penalties.

The Secretary of State may assess a civil penalty against an athlete agent in an amount of not to exceed twenty-five thousand dollars for each violation of this article.

ARKANSAS

Ark. Code Ann. § 17-16-101 to § 17-16-119 (LexisNexis 2001)

§ 17-16-101. Short title.

This subchapter may be cited as the Uniform Athlete Agents Act.

§ 17-16-102. Definitions.

In this subchapter:

(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.

(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) "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.

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

(7) “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.

(8) “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) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(10) “Registration” means registration as an athlete agent pursuant to this subchapter.

(11) “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.

(12) “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.

§ 17-16-103. Service of process—Subpoenas.

By acting as an athlete agent in this State, a nonresident individual appoints the Secretary of State as the individual’s agent for service of process in any civil action in this State related to the individual’s acting as an athlete agent in this State.

§ 17-16-104. Athlete agents—Registration required—Void contracts.

- (a) Except as otherwise provided in subsection (b), an individual may not act as an athlete agent in this State without holding a certificate of registration under §17-16-106.
- (b) Before being issued a certificate of registration, an individual may act as an athlete agent in this State for all purposes except signing an agency contract, if:

- (1) a student-athlete or another person acting on behalf of the student-athlete initiates communication with the individual; and
 - (2) within seven (7) days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in this State.
- (c) An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract.

§ 17-16-105. Registration as athlete agent—Form—Requirements.

- (a) An applicant for registration shall submit an application for registration to the Secretary of State in a form prescribed by the Secretary of State. An application filed under this section is a public record. The application must be in the name of an individual 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 of the applicant and the address of the applicant's principal place of business;
 - (2) the name of the applicant's business or employer, if applicable;
 - (3) any business or occupation engaged in by the applicant for the five (5) years next preceding the date of submission of the application;
 - (4) a description of the applicant's:
 - (A) formal training as an athlete agent;
 - (B) practical experience as an athlete agent; and
 - (C) educational background relating to the applicant's activities as an athlete agent;
 - (5) the names and addresses of three (3) individuals not related to the applicant who are willing to serve as references;
 - (6) the name, sport, and last known team for each individual for whom the applicant acted as an athlete agent during the five (5) years next preceding the date of submission of the application;
 - (7) the names and addresses of all persons who are:
 - (A) with respect to the athlete agent's business if it is not a corporation, the partners, members, officers, managers, associates, or profit-sharers of the business; and

- (B) with respect to a corporation employing the athlete agent, the officers, directors, and any shareholder of the corporation having an interest of five percent (5%) or greater;
 - (8) whether the applicant or any person named pursuant to paragraph (7) has been convicted of a crime that, if committed in this State, would be a crime involving moral turpitude or a felony, and identify the crime;
 - (9) whether there has been any administrative or judicial determination that the applicant or any person named pursuant to paragraph (7) has made a false, misleading, deceptive, or **fraudulent** representation;
 - (10) any instance in which the conduct of the applicant or any person named pursuant to paragraph (7) resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or educational institution;
 - (11) any sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to paragraph (7) arising out of occupational or professional conduct; and
 - (12) whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any person named pursuant to paragraph (7) as an athlete agent in any State.
- (b) An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another State, may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to subsection (a). The Secretary of State shall accept the application and the certificate from the other State as an application for registration in this State if the application to the other State:
- (1) was submitted in the other State within six (6) 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.

§ 17-16-106. Certificate of registration—Issuance or denial—Renewal.

- (a) The Secretary of State shall issue a certificate of registration to an individual who complies with § 17-16-105(a) or whose application has been accepted under § 17-16-105(b).
- (b) An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the Secretary of State. 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.
- (c) 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 Secretary of State 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 (6) 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.
- (d) A certificate of registration or a renewal of a registration is valid for two (2) years.

§§ 17-16-107 and 17-16-108. Reserved.

17-16-109. Registration and renewal fees.

- (a) An application for registration or renewal of registration must be accompanied by a fee in the following amount:
 - (1) five hundred dollars (\$500) for an initial application for registration;
 - (2) one hundred dollars (\$100) for an application for registration based upon a certificate of registration or licensure issued by another State;

- (3) five hundred dollars (\$500) for an application for renewal of registration; or
 - (4) one hundred dollars (\$100) for an application for renewal of registration based upon an application for renewal of registration or licensure submitted in another State.
- (b) Fees received under this chapter by the Secretary of State shall be deposited in the State Treasury to the credit of the General Revenue Fund

§ 17-16-110. Required form of contract.

- (a) An agency contract must be in a record, signed or otherwise authenticated by the parties.
- (b) An agency contract must state or 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 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, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND**

- (3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.
- (d) An agency contract that does not conform to this section is voidable by the student-athlete. If a student-athlete voids an agency contract, the student-athlete is not required to pay 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.
- (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.

§ 17-16-111. Notice to educational institution.

- (a) Within seventy-two (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 the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.
- (b) Within seventy-two (72) 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.

§ 17-16-112. Student-athlete's right to cancel.

- (a) A student-athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within fourteen (14) days after the contract is signed.
- (b) A student-athlete may not waive the right to cancel an agency contract.
- (c) If a student-athlete cancels an agency contract, the student-athlete is not required to pay 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.

§ 17-16-113. Required records.

- (a) An athlete agent shall retain the following records for a period of five (5) years:

- (1) the name and address of each individual represented by the athlete agent;
 - (2) any agency contract entered into by the athlete agent; and
 - (3) any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract.
- (b) Records required by subsection (a) to be retained are open to public inspection during normal business hours.

§ 17-16-114. Prohibited conduct.

- (a) An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, may not:
- (1) give any 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 any individual other than the student-athlete or another registered athlete agent.
- (b) An athlete agent may not intentionally:
- (1) initiate contact with a student-athlete unless registered under this subchapter;
 - (2) refuse or fail to retain or permit inspection of the records required to be retained by § 17-16-113;
 - (3) fail to register when required by § 17-16-104;
 - (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 before the student-athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate as a student-athlete in that sport.

§ 17-16-115. Criminal penalties.

An athlete agent who violates § 17-16-114 is guilty of a Class A misdemeanor.

§ 17-16-116. Civil remedies.

- (a) With respect to any athlete agent who has had either a criminal or administrative penalty imposed against him or her under the Uniform Athlete Agent's Act, § 17-16-101 et seq., as adopted by the State of Arkansas or any other State, in two (2) or more prior instances:
 - (1) 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 subchapter. In an action under this section, the court may award to the prevailing party costs and reasonable attorney's fees;
 - (2) damages of an educational institution under paragraph (1) include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student-athlete, the educational institution was injured by a violation of this subchapter 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;
 - (3) a right of action under 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; and
 - (4) any liability of the athlete agent or the former student-athlete under this section is several and not joint.
- (b) This subchapter does not restrict rights, remedies, or defenses of any person under law or equity.

§ 17-16-117. Administrative penalty.

The Attorney General may seek a civil penalty, in any court of competent jurisdiction, against an athlete agent not to exceed fifty thousand dollars (\$50,000) for a violation of this subchapter.

§ 17-16-118. Uniformity of application and construction.

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.

§ 17-16-119. Electronic signatures in Global and National Commerce Act.

The provisions of this subchapter governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act, [FN1Pub. L. No. 106-229, 114 Stat. 464 (2000)], and supersede, modify, and limit the Electronic Signatures in Global and National Commerce Act.

§ 17-16-201 to § 17-16-207. Repealed by Acts of 2001, Act 1622, § 19, eff. Aug. 13, 2001.

CALIFORNIA

§ 18895. Short Title.

This chapter shall be known and may be cited as the Miller-Ayala Athlete Agents Act.

§ 18895.2 Definitions.

The following definitions govern the construction of this chapter:

- (a) “Agent contract” means any contract or agreement pursuant to which a person authorizes or empowers an athlete agent to negotiate or solicit on behalf of the person with one or more professional sports teams or organizations for the employment of the person by one or more professional sports teams or organizations, or to negotiate or solicit on behalf of the person for the employment of the person as a professional athlete.
- (b) (1) “Athlete agent” means any person who, directly or indirectly, recruits or solicits an athlete to enter into any agent contract, endorsement contract, financial services contract, or professional sports services contract, or for compensation procures, offers, promises, attempts, or negotiates to obtain employment for any person with a professional sports team or organization or as a professional athlete.
- (2) (A) “Athlete agent” does not include a person licensed as an attorney, dealer in securities, financial planner, insurance agent, real estate broker or sales agent, or tax consultant, or other professional person, when the professional person offers or provides the type of services customarily provided by that profession, except and solely to the extent that the professional person also recruits or solicits an athlete to enter into any agent contract, endorsement contract, or professional sports services contract, or for compensation procures, offers, promises, attempts, or negotiates to obtain employment for any person with a professional sports team or organization or as a professional athlete.

- (B) "Athlete agent" also does not include any person acting solely on behalf of a professional sports team or organization.
 - (C) "Athlete agent" also does not include a talent agency as defined in subdivision (a) of Section 1700.4 of the Labor Code and licensed by the Labor Commissioner pursuant to Chapter 4 (commencing with Section 1700) of Part 6 of Division 2 of the Labor Code, except as otherwise provided in this paragraph. "Athlete agent" includes a talent agency that (i) directly or indirectly recruits or solicits a student athlete to enter into an agent contract, endorsement contract, financial services contract, or professional sports services contract, or (ii) for compensation, procures, offers, promises, attempts, or negotiates to obtain employment for any person to perform on-field play with a professional sports team or organization.
- (3) Sections 18896.6, 18897.6 and 18897.63 do not apply to an individual acting as an athlete agent solely for his or her spouse, child, foster child, ward, or grandchild.
- (c) "Employment as a professional athlete" includes employment pursuant to an endorsement contract or a professional sports services contract.
 - (d) "Endorsement contract" means any contract or agreement pursuant to which a person is employed or receives remuneration for any value or utility that the person may have because of publicity, reputation, fame, or following obtained because of athletic ability or performance.
 - (e) "Financial services" means the making or execution of an investment or other financial decision, or counseling as to a financial decision.
 - (f) "Negotiate" includes any contact on behalf of any athlete with a professional sports team or organization or on behalf of any person with any other person who employs or potentially may employ the person as a professional athlete, regardless of whether the contact is made in person, in writing, electronically, through representatives or employees, or in any other manner. "Negotiate" also includes being present during any discussion of an endorsement contract or professional sports services contract with representatives of the professional sports team or organization or potential or actual employer.
 - (g) "Person" means any individual, company, corporation, association, partnership, limited liability company, or their agents or employees.
 - (h) "Professional sports services contract" means any contract or agreement pursuant to which a person is employed or agrees to render services as a player on a professional sports team or organization or as a professional athlete.

- (i) (1) “Student athlete” means any individual admitted to or enrolled as a student, in an elementary or secondary school, college, university, or other educational institution if the student participates, or has informed the institution of an intention to participate, as an athlete in a sports program where the sports program is engaged in competition with other educational institutions.
- (2) “Student athlete” does not include any person who has entered into a valid agent contract, a valid endorsement contract, or a valid professional sports services contract. “Student athlete” does not include any student of a college or university whose eligibility to participate in an intercollegiate sport has terminated, as determined by the governing body of the state or national association for the promotion and regulation of intercollegiate athletics of which the student’s college or university is a member.

§ 18896. Information regarding athlete agent; filing with Secretary of State; contents.

To assist enforcement of this chapter, each athlete agent, prior to engaging in or carrying on the business of athlete agent, shall file the following information with the Secretary of State, in the form that the Secretary of State shall prescribe, concerning the athlete agent and each individual acting as an athlete agent within a firm, company, or partnership:

- (a) The name, residence address, social security number, and driver’s license number.
- (b) The street and address number of all locations where the business of the athlete agent is to be conducted.
- (c) The name and business address of a designated agent in California for service of process, as required by Section 18897.83.
- (d) All businesses or occupations engaged in for the two years immediately preceding the date of filing.
- (e) Any convictions for any of the following:
 - (1) A felony.
 - (2) A misdemeanor involving a violation of this chapter, or Chapter 1 (commencing with Section 1500) of Part 6 of Division 2 of the Labor Code as repealed by Chapter 857 of the Statutes of 1996, or the law of any other state governing athlete agents.
 - (3) **Fraud**, theft, embezzlement, **fraudulent** conversion, or misappropriation of property.

- (f) (1) The name of the insurer providing the security required by Section 18897.87, and the amount of that insurance coverage, if the athlete agent provides some or all of that security in the manner required by subdivision (a) of Section 18897.87.
- (2) The value and specific location of the security required by Section 18897.87, if the athlete agent provides some or all of that security in the manner required by subdivision (b) of Section 18897.87.
- (g) Any appearances before any disciplinary or professional board, association, secretary, committee, or other entity as a result of disciplinary charges or other allegations of misconduct against the athlete agent or individual, and the outcome of those proceedings.
- (h) Whether or not any student athlete or any educational institution has been sanctioned, suspended, or declared ineligible to participate in one or more interscholastic or intercollegiate athletic events in any proceeding arising from, or related to, the actions of the athlete agent.
- (i) All past and present persons on behalf of whom the athlete agent or individual has acted as an athlete agent.
- (j) The names of any players' associations with whom the athlete agent is registered.
- (k) At least three references.
- (l) Affidavits or certificate or completion of any and all formal training or practical experience in any of the following specific areas: contracts, contract negotiation, complaint resolution, arbitration, or civil resolution of contract disputes.
- (m) The names and residence addresses of all persons financially interested in the operation of the business of the athlete agent, whether as employees, partners, investors, associates, or profit sharers, or in any other manner.
- (n) A schedule of fees to be charged and collected in the conduct of the athlete agent business.

§ 18896.2. Revised information regarding athlete agent.

- (a) Within seven days of the time any information in the filing required by Section 18896 changes, the athlete agent shall file revised information in the form that the Secretary of State shall prescribe.
- (b) No revision of a fee schedule filed pursuant to subdivision (n) of Section 18896 shall be effective until it is filed pursuant to this section.

§ 18896.3. Form Statement.

The forms prescribed by the Secretary of State pursuant to Sections 18896 and 18896.2 shall include the following statement:

“Filing of false, misleading, or incomplete statements on this form may subject you to criminal and civil penalties under the Miller-Ayala Athlete Agents Act, Chapter 2.5 (commencing with Section 18895) of Division 8 of the Business and Professions Code.”

§ 18896.4. Exclusion from Disclosure; other businesses of athlete agent.

Sections 18896 and 18896.2 do not require the disclosure of information related solely and exclusively to other businesses of the athlete agent.

§ 18896.6. Written notification by athlete agent upon contact with athlete or family.

Upon making first contact, direct or indirect, with a professional athlete, a student athlete, a student athlete’s spouse, parent, foster parent, guardian, sibling, aunt, uncle, grandparent, child, or first cousin, any of the preceding persons for whom a relationship has been established by marriage, or any person residing in the same place as a student athlete, or a representative of any of these persons, an athlete agent, or his or her employee or representative, shall provide that person with a written notification stating:

“This athlete agent has current public-disclosure information on file with the California Secretary of State as required by the Miller-Ayala Athlete Agents Act, Chapter 2.5 (commencing with Section 18895) of Division 8 of the Business and Professions Code, which also includes other protections for athletes. Filing of the required information does not imply approval by the California Secretary of State of the competence of the athlete agent.”

The notification shall also include specific instructions on how to obtain the public disclosure information from the Secretary of State.

§ 18896.8. Filing fees.

- (a) An athlete agent shall pay filing fees in an amount established pursuant to subdivision (b) of Section 12195 of the Government Code upon making the filings required by Sections 18896 and 18896.2.

- (b) All fees collected by the Secretary of State under this chapter shall be paid into the State Treasury and credited to the Business Fees Fund of the Secretary of State.

§ 18897. Agent contracts; form and contents.

Every agent contract shall be in writing and shall include a description of the types of services to be performed and a schedule of the fees to be charged under the contract.

§ 18897.1. Agent contracts; required language on first page.

The following shall be printed on the first page of every agent contract in boldface type at least two points larger than any other type on the page:

“This athlete agent has current public disclosure information on file with the California Secretary of State as required by the Miller-Ayala Athlete Agents Act, Chapter 2.5 (commencing with Section 18895) of Division 8 of the Business and Professions Code, which also includes other protections for athletes.”

Filing of the required information does not imply approval by the California Secretary of State of the terms and conditions of this agent contract or the competence of the athlete agent.”

§ 18897.2. Athlete agent as recipient of athlete’s salary; establishment of trust fund; deposit requirements.

A trust fund shall be established when an athlete agent is the recipient of the athlete’s salary. An athlete agent who receives any payment on behalf of the athlete shall immediately deposit the payment in a trust fund account maintained by the athlete agent in a state or federally chartered financial institution.

§ 18897.23. Recordkeeping requirements; false entries.

- (a) Every athlete agent shall maintain records which include the following information:
- (1) The name and address of each person employing the athlete agent.
 - (2) The amount of fee received from that person.

- (b) No athlete agent or athlete agent's representative or employee shall make any false entry in the records. All records required by this section shall be kept for at least seven years.
- (c) This section does not apply to any business of the athlete agent other than the athlete agent business.

§ 18897.27. Ownership or financial interest in entities involved in same sport; prohibition.

No athlete agent shall have an ownership or financial interest in any entity that is directly involved in the same sport as a person with whom the athlete agent has entered into an agreement contract, for whom the athlete agent is attempting to negotiate an endorsement contract, financial services contract or professional sports service contract, or for whom the athlete agent provides advice concerning potential or actual employment as a professional athlete.

§ 18897.3. Financial services of investment advice; disclosure requirements.

If an athlete agent or athlete agent's representative or employee provides financial services to a professional athlete or student athlete or advises the athlete concerning investment of funds, the athlete agent shall disclose to the athlete any ownership interest the athlete agent, representative or employee has in any entity regarding which the athlete agent, representative or employee is providing financial services or giving advice, and any commission the athlete agent, representative or employee will receive from the athlete's investment.

§ 18897.33. Unlawful contract terms or conditions; unlawful attempts to fill an order for help to be employed.

No athlete agent shall knowingly enter into a contract containing any term or condition that, if complied with, would be in violation of law, or attempt to fill an order for help to be employed in violation of the law.

§ 18897.37. False, fraudulent, or misleading information, representation, notice, or advertisement; false information or false promises or representations concerning employment.

No athlete agent or athlete agent's representative or employee shall publish or cause to be published any false, fraudulent, or misleading information, representation, notice, or advertisement. No athlete agent or athlete agent's representative or employee shall give any false information or make any false promises or representations concerning any employment to any person.

§ 18897.4. Advertising used by athlete agents; name and business address.

All forms of advertising used by an athlete agent shall include the name and business address of the athlete agent.

§ 18897.43. Strikes, lockouts, or other labor troubles; notice of conditions.

No athlete agent shall knowingly secure employment for persons in any place where a strike, lockout, or other labor trouble exists, without notifying the person of those conditions.

§ 18897.47. Division of fees with or receipt of compensation from professional sports leagues, teams or other organizations or its representatives or employees; ownership of or participation in athlete's agent's revenues by union or player's association employees; prohibitions.

No athlete agent shall divide fees with or receive compensation from a professional sports league, team, or other organization or its representatives or employee, or offer or allow any full-time employee of a union or players' association connected with professional sports to own or participate in any of the revenues of the athlete agent.

§ 18897.5. Postdated contracts.

No athlete agent shall negotiate or enter into any postdated agent contract, endorsement contract or professional sports services contract or any agent

contract, endorsement contract or professional sports services contract that purports to or takes effect at a future time.

§ 18897.6. Offers or provision of money or any other thing of benefit or value to student athletes; prohibition.

No athlete agent or athlete agent's representative or employee shall, directly or indirectly, offer or provide money or any other thing of benefit or value to a student athlete.

§ 18897.63. Contact by athlete agent or athlete agent's representative or employees with student athletes or student athletes' family member or roommates; restrictions.

- (a) Except as otherwise provided in this section, no athlete agent or athlete agent's representative or employee may make or continue any contact, whether in person, in writing, electronically, or in any other manner, with any student athlete, or any student athlete's spouse, parent, foster parent, guardian, grandparent, child, sibling, aunt, uncle, or first cousin, or any of the preceding persons for whom the relationship has been established by marriage, or any person who resides in the same place as the student athlete, or any representative of any of these persons.
- (b) An athlete agent or athlete agent's representative or employee may send a student athlete, or any of the other persons described in subdivision (a), written materials, provided that the athlete agent previously has sent, or simultaneously sends, an identical copy of the materials to the principal, president, or other chief administrator of the elementary or secondary school, college, university, or other educational institution to which the student athlete has been admitted or in which the student athlete is enrolled.
- (c) If a student athlete, or any of the other persons described in subdivision (a), initiates contact with an athlete agent or athlete agent's representative or employee, the athlete agent, representative or employee may continue the contact and make new contacts with that person. No later than the first regular business day after that person first initiates contact, the athlete agent shall notify in writing the principal, president, or other chief administrator of the elementary or secondary school, college, university, or other educational institution to which the student athlete has been admitted or in which the student athlete is

enrolled, of that contact. The notification shall describe the nature of the contact.

- (d) Any written material described in subdivision (b) and any notification required by subdivision (c), shall include the notification required by Section 18896.6.
- (e) This section does not apply to any contact between an athlete agent or athlete agent's representative or employee and a student athlete or any of the other persons described in subdivision (a), if and solely to the extent that the contact is initiated by an elementary or secondary school, college, university, or other educational institution to which the student athlete has been admitted or in which the student athlete is enrolled.

§ 18897.67. Offers or provision of money or any other thing of benefit or value to elementary or secondary schools, colleges, universities, or other educational institutions or their representatives or employees; prohibition.

No athlete agent or athlete agent's representative or employee shall offer or provide money or anything of benefit or value, including, but not limited to, free or reduced price legal services, to any elementary or secondary school, college, university, or other educational institution, or any representative or employee of any such educational institution in return for the referral of any clients or initiation of any contact described in subdivision (d) of Section 18897.63.

§ 18897.7. Notice of contract to elementary or secondary schools, college, universities, or other educational institutions; time of notice.

An athlete agent and a student athlete who enter into an agent contract, endorsement contract or professional sports services contract shall provide written notice of the contract to the principal, president, or other chief administrator of the elementary or secondary school, college, university or other educational institution to which the student athlete has been admitted or is enrolled. The athlete agent shall provide the notice in writing within 48 hours of entering into the contract. The student athlete shall provide the notice before the student athlete practices for or participates in any interscholastic or intercollegiate sports event or within 72 hours after entering into the contract, whichever occurs first.

§ 18897.73. Contract terms; notice of loss of eligibility to compete in interscholastic or intercollegiate sports.

Every agent contract, endorsement contract, or professional sports services contract entered into by a student athlete shall contain, in close proximity to the signature of the student athlete, a notice in at least 10-point boldface type stating:

“WARNING TO THE STUDENT ATHLETE: WHEN YOU SIGN THIS CONTRACT, YOU LIKELY WILL IMMEDIATELY AND PERMANENTLY LOSE YOUR ELIGIBILITY TO COMPETE IN INTERSCHOLASTIC OR INTERCOLLEGIATE SPORTS. YOU MUST GIVE THE PRINCIPAL, PRESIDENT, OR OTHER CHIEF ADMINISTRATOR OF YOUR EDUCATIONAL INSTITUTION WRITTEN NOTICE THAT YOU HAVE ENTERED INTO THIS CONTRACT WITHIN 72 HOURS, OR BEFORE YOU PRACTICE FOR OR PARTICIPATE IN ANY INTERSCHOLASTIC OR INTERCOLLEGIATE SPORTS EVENT, WHICHEVER OCCURS FIRST. DO NOT SIGN THIS CONTRACT UNTIL YOU HAVE READ IT AND FILLED IN ANY BLANK SPACES. YOU MAY CANCEL THIS CONTRACT BY NOTIFYING THE ATHLETE AGENT, OR OTHER PARTY TO THIS CONTRACT, IN WRITING OF YOUR DESIRE TO CANCEL NOT LATER THAN THE 15TH DAY AFTER THE DATE YOU SIGN THIS CONTRACT. HOWEVER, EVEN IF YOU CANCEL THIS CONTRACT, THE FEDERATION OR ASSOCIATION TO WHICH YOUR EDUCATIONAL INSTITUTION BELONGS MAY NOT RESTORE YOUR ELIGIBILITY.”

§ 18897.77. Rescission of contract by student athlete.

Within 15 days after the date a student athlete enters into an agent contract, endorsement contract or professional sports services contract, the student athlete may rescind the contract by giving written notice to the athlete agent, or other party to the contract, of the student athlete’s desire to cancel the contract.

The student athlete may not under any circumstances waive the right under this section to rescind the contract.

§ 18897.8. Civil actions against athlete agents; presumptions; damages, costs and attorney’s fees; legislative intent.

- (a) Any professional athlete, or any student athlete, or any elementary or secondary school, college, university, or other educational institution,

or any league, conference, association, or federation of the preceding educational institutions, or any other person may bring a civil action for recovery of damages from an athlete agent, if that professional athlete, that student athlete, that institution, any member of that league, conference, association, or federation, or that other person is adversely affected by the acts of the athlete agent or of the athlete agent's representative or employee in violation of this chapter. A student athlete is presumed to be adversely affected by the acts of an athlete agent, representative or employee in violation of this chapter if, because of those acts, the student athlete is suspended or disqualified from participation in one or more interscholastic or intercollegiate sports events by or pursuant to the rules of a state or national federation or association for the promotion and regulation of interscholastic or intercollegiate sports, or suffers financial damage, or suffers both suspension or disqualification and financial damage. An educational institution is presumed to be adversely affected by the acts of an athlete agent or of an athlete agent's representative or employee in violation of this chapter if, because of those acts, the educational institution, or one or more student athletes admitted to or enrolled in the educational institution, is suspended or disqualified from participation in one or more interscholastic or intercollegiate athletic events by or pursuant to the rules of a state or national federation or association for the promotion and regulation of interscholastic or intercollegiate sports events by or pursuant to the rules of a state or national federation or association for the promotion and regulation of interscholastic or intercollegiate sports, or suffers financial damage, or suffers both suspension or disqualification and financial damage.

- (b) A plaintiff that prevails in a civil action brought under this section may recover actual damages, or fifty thousand dollars (\$50,000), whichever is higher; punitive damages; court costs; and reasonable attorney's fees. An athlete agent found liable under this section is also subject to forfeiture of any right of repayment for anything of benefit or value provided to a student athlete, and shall refund any consideration paid to that athlete agent by or on behalf of the student athlete.
- (c) It is the intent of the Legislature in enacting this section to encourage enforcement of this chapter through private civil actions.

§ 18897.83. Service of process.

Every athlete agent shall maintain an agent for service of process in California.

§ 18897.87. Security for claims against agent or representatives or employees; amount and manner.

Every athlete agent shall provide security for claims against the athlete agent or the athlete agent's representatives or employees based upon acts, errors, or omissions arising out of the business of the athlete agent through either one or an aggregate of both of the following:

- (a) A policy or policies of insurance against liability imposed on or against the agent by law for damages arising out of claims in an amount for each claim of at least one hundred thousand dollars (\$100,000).
- (b) In trust or bank escrow, cash, bank certificates of deposit, United States Treasury obligations, bank letters of credit, or bonds of insurance companies as security for payment of liabilities imposed by law for damages arising out of all claims in an amount of at least one hundred thousand dollars (\$100,000).

§ 18897.9. Agent contracts; compliance with Miller-Ayala athlete agents act.

- (a) Any agent contract that is negotiated by an athlete agent who fails to comply with this chapter, or has failed to comply with Chapter 1 (commencing with Section 1500) of Part 6 of Division 2 of the Labor Code, as repealed by Assembly Bill 1987 of the 1995-96 Regular Session, is void and unenforceable.
- (b) No person shall owe an athlete agent any money or other consideration pursuant to an endorsement contract, financial services contract, or professional sports services contract negotiated by the athlete agent if the athlete agent fails to comply with this chapter, or has failed to comply with Chapter 1 (commencing with Section 1500) of Part 6 of Division 2 of the Labor Code, as repealed by Assembly Bill 1987 of the 1995-96 Regular Session. The athlete agent shall refund any money or other consideration paid pursuant to that contract.

§ 18897.93. Violations; offense; penalties.

An athlete agent or athlete agent's representative or employee who violates any provision of this chapter is guilty of a misdemeanor, and shall be punished by a fine of not more than fifty thousand dollars (\$50,000), or imprisonment in a county jail not exceeding one year, or by both that fine

and imprisonment. The court may suspend or revoke the privilege of any person convicted of a violation of this chapter to conduct the business of athlete agent.

§ 18897.97. Rules and regulations; adopt, amend and repeal powers.

The Secretary of State may, in accordance with Chapter 3.5 (commencing with Section 11430) of Part 1 of Division 3 of Title 2 of the Government Code, adopt, amend, and repeal rules and regulations reasonably necessary for the purpose of administering this chapter and consistent with this chapter.

COLORADO

§ 23-16-101. Legislative declaration.

The general assembly hereby finds that dishonest or unscrupulous practices by athlete agents who solicit representation of student athletes can cause significant harm to student athletes and to the institutions of higher education for which they play. It is the general assembly's intent to protect the interests of student athletes and institutions of higher education by limiting the contacts between athlete agents and student athletes and by setting requirements for contracts entered into between athlete agents and student athletes.

Source: L. 96: Entire article added, p. 1487, § 1, effective July 1.

§ 23-16-102. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Agent contract" means any contract or agreement in which a student athlete authorizes or empowers, or agrees to authorize or empower at some later date, an athlete agent to negotiate or solicit any professional sport services contract or marketing endorsement contract on behalf of the student athlete regardless of whether the athlete agent is entitled to compensation under the contract or agreement.

(2) "Athlete agent" means a person who, directly or indirectly, recruits or solicits a student athlete to enter into an agent contract, or who, for any type of financial gain, procures, offers, promises, or attempts to obtain employment or promotional fees or benefits for a student athlete with a professional sports team or as a professional athlete or with any promoter who markets or attempts to market the student athlete's athletic ability or athletic reputation.

(3) "Commission" means the Colorado commission on higher education created in section 23-1-102.

(4) "Governing board" means the governing body of a state-supported institution of higher education.

(5) “Institution” means any state-supported institution of higher education operating in this state and any nonpublic institution of higher education, as defined in section 23-3.7-102 (3), operating in this state.

(6) “Student athlete” means any individual who is enrolled as a student at an institution and has either submitted a written letter of intent to or is eligible to and does participate in any intercollegiate sporting event, contest, exhibition, or program.

Source: L. 96: Entire article added, p. 1487, § 1, effective July 1.

§ 23-16-103. Contact with student athletes prohibited.

- (1) Except as otherwise provided in this article, an athlete agent shall not:
 - (a) Enter into any agreement, written or oral, by which the athlete agent offers anything of value to an employee of an institution in return for the referral of any student athletes to the athlete agent by the employee;
 - (b) Offer anything of monetary value to the student athlete or a member of the student athlete’s immediate family to induce the student athlete, either at the time of offering or at some future time, to enter into an agent contract or any other agreement, written or oral, by which the athlete agent will represent the student athlete.
- (2) No person, whether or not for compensation, shall assist, aid, or abet an athlete agent in committing any of the actions specified in subsection (1) of this section.

Source: L. 96: Entire article added, p. 1488, § 1, effective July 1.

§ 23-16-104. Agent contracts—contents—notice—termination.

- (1) Any agent contract entered into between an athlete agent and a student athlete shall at a minimum include:
 - (a) The amount of the fees and expenses and the percentages to be paid by the student athlete to the athlete agent;
 - (b) A description of the professional services that the athlete agent will render to the student athlete in return for each fee, expense, or percentage;
 - (c) Any guarantees provided by the agent to the athlete;

- (d) The following statement in at least ten-point type that is boldface, capitalized, underlined, or otherwise conspicuously set out from surrounding written material:

WARNING TO STUDENT ATHLETE:

WHEN YOU SIGN THIS CONTRACT, IT IS LIKELY YOU WILL IMMEDIATELY LOSE YOUR ELIGIBILITY TO COMPETE IN INTERCOLLEGIATE ATHLETICS. YOU MUST GIVE WRITTEN NOTICE THAT YOU HAVE ENTERED INTO THIS CONTRACT TO THE ATHLETIC DIRECTOR OF YOUR COLLEGE OR UNIVERSITY WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT OR PRIOR TO PARTICIPATING IN YOUR NEXT INTERCOLLEGIATE ATHLETIC EVENT, WHICHEVER COMES FIRST.

DO NOT SIGN THIS CONTRACT UNTIL YOU HAVE READ IT OR IF IT CONTAINS BLANK SPACES. DO NOT SIGN THIS CONTRACT IF IT DOES NOT SPECIFY ALL OF THE GUARANTEES MADE TO YOU BY THE ATHLETE AGENT. IF YOU DECIDE THAT YOU DO NOT WISH TO PURCHASE THE SERVICES OF THE ATHLETE AGENT, YOU MAY CANCEL THIS CONTRACT BY NOTIFYING THE ATHLETE AGENT IN WRITING OF YOUR DESIRE TO CANCEL THE CONTRACT NOT LATER THAN 15 DAYS AFTER THE DATE ON WHICH YOU SIGN THIS CONTRACT.

- (2) Within seventy-two hours after entering into an agent contract, the student athlete shall notify the athletic director of the institution at which the student athlete is enrolled and provide a copy of the signed agent contract. If a student athlete enters into an agent contract prior to enrolling at an institution, the student athlete, within seventy-two hours after enrollment, shall notify the athletic director of the institution at which the student enrolls and provide a copy of the signed agent contract.
- (3) The student athlete may rescind any agent contract within fifteen consecutive business days after entering into the agent contract by providing written notice to the athlete agent. The student athlete shall also provide notice of termination of the agent contract to the athletic director of the institution at which the student athlete is enrolled. Failure to provide notice to the athletic director shall not affect termination of the agent contract. The student athlete may not under any circumstances waive the student athlete's right to rescind the agent contract.

- (4) The student athlete may rescind any agent contract that does not include the warning specified in subsection (1) of this section at any time after entering into the agent contract by providing written notice to the athlete agent.

Source: L. 96: Entire article added, p. 1488, § 1, effective July 1.

§ 23-16-105. Exceptions—written materials—student-initiated contacts.

- (1) The provisions of this article shall not prohibit an athlete agent from:
 - (a) Sending written materials to a student athlete so long as the athlete agent previously sent or simultaneously sends an identical copy of said written materials to the athletic director of the institution at which the student athlete is enrolled;
 - (b) Otherwise contacting a student athlete, so long as the contact is only for providing information to the student athlete and the athlete agent does not provide anything of monetary value to the student athlete.

Source: L. 96: Entire article added, p. 1490, § 1, effective July 1.

§ 23-16-106. Athlete agent interviews—scheduling—rules.

Each institution that participates in intercollegiate athletics may sponsor on-campus athlete agent interviews at which an athlete agent may interview student athletes to discuss the athlete agent's representation of the student athletes in the marketing of the student athletes' athletic ability or reputation. The governing board of the institution or the institution may adopt rules with regard to the scheduling of interview periods, the duration of each interview period, and locations on campus where interviews may be conducted.

Source: L. 96: Entire article added, p. 1490, § 1, effective July 1.

§ 23-16-107. Compliance coordinator—duties.

- (1) Each institution or governing board shall designate an individual to serve as compliance coordinator for the institution or for each institution under the governing board's management. The compliance coordinator shall ensure the compliance of the institution and its athletes and students with the provisions of this article and the rules adopted by the governing board or institution.

- (2) If an institution chooses to sponsor on-campus athlete agent interviews as provided in section 23-16-106, the compliance coordinator shall organize the athlete interview schedule. The compliance coordinator shall provide appropriate public notice of the interview period at least thirty days before the date the interview period is scheduled to begin. On receipt of a written request, the compliance coordinator shall provide an athlete agent with a copy of the rules adopted by the governing board or institution pursuant to section 23-16-106.

Source: L. 96: Entire article added, p. 1490, § 1, effective July 1.

§ 23-16-108. Violations—penalties—civil suit.

- (1)
 - (a) Any agent contract that does not meet the requirements of section 23-16-104 or for which the athlete agent or student athlete fails to provide notice as required in section 23-16-104 is voidable and unenforceable at the student athlete's election.
 - (b) A postdated agent contract is voidable and unenforceable at the student athlete's election.
 - (c) An agent contract that purports to take or takes effect at a future time after the student athlete is no longer eligible to participate in intercollegiate athletics is voidable and unenforceable at the student athlete's election.
 - (d) If an agent contract is voided pursuant to paragraph (a), (b), or (c) of this subsection (1), the athlete agent that was party to the agent contract may not recover any monetary or other form of consideration paid to the student athlete or to a member of the student athlete's immediate family pursuant to the agent contract or as an inducement to the student athlete to enter into the agent contract.
- (2)
 - (a) The attorney general or the district attorney of the judicial district in which the institution is located, on receipt of a complaint or on his or her initiative, may investigate any alleged violations of sections 23-16-103 to 23-16-105. Following an investigation, if the attorney general or district attorney has reasonable cause to believe that any individual has violated or is violating any provision of sections 23-16-103 to 23-16-105, the attorney general or district attorney may bring an action to obtain a temporary restraining order, preliminary injunction, or permanent injunction to restrain or prevent the violation. If the attorney general or district attorney, by a preponderance of the evidence, shows that an individual has violated or is violating any provision of sections

23-16-103 to 23-16-105, the court may issue a temporary restraining order, preliminary injunction, or permanent injunction to restrain or prevent the violation.

- (b) On motion of the attorney general or the district attorney, or on its own motion, the court may impose a civil penalty of not more than ten thousand dollars against any individual, other than the student athlete, who violates any provision of sections 23-16-103 to 23-16-105. The civil penalty ordered pursuant to this section shall be paid to the state treasurer for deposit into the state general fund.
 - (c) No action may be brought by the attorney general or the district attorney under this section more than four years after the occurrence of the violation.
- (3) (a) An institution may bring an action for damages, as provided in paragraph (b) of this subsection (3), against any individual, other than the student athlete, who violates any provision of sections 23-16-103 to 23-16-105. An institution may seek equitable relief to prevent or minimize harm arising from acts or omissions that are or would be a violation of sections 23-16-103 to 23-16-105.
- (b) For purposes of this subsection (3), an institution is damaged if, because of the individual's activities in violation of sections 23-16-103 to 23-16-105, the institution is penalized or is disqualified or suspended from participating in intercollegiate athletics by a national association for the promotion and regulation of intercollegiate athletics or by an intercollegiate athletic conference and, because of the penalty, disqualification, or suspension, the institution:
- (I) Loses revenue from media coverage of a sports contest;
 - (II) Loses the right to grant an athletic scholarship;
 - (III) Loses the right to recruit an athlete;
 - (IV) Is prohibited from participating in postseason athletic competition;
 - (V) Forfeits an athletic contest; or
 - (VI) Otherwise suffers an adverse financial impact.
- (c) An institution that prevails in a suit brought under this subsection (3) may recover:
- (I) Actual damages;
 - (II) Punitive damages;
 - (III) Court costs; and
 - (IV) Reasonable attorney fees.

Source: L. 96: Entire article added, p. 1490, § 1, effective July 1.

CONNECTICUT

Conn. Gen. Stat. Ann. § 20-559 to § 20-559s (West Supp. 2006)

§ 20-559. Short title

Sections 20-559 to 20-559s, inclusive, may be cited as the “Uniform Athlete Agents Act”.

§ 20-559a. Definitions

As used in sections 20-559 to 20-559s, inclusive:

(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.

(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) “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.

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

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

(8) “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) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(10) “Registration” means registration as an athlete agent pursuant to sections 20-559 to 20-559s, inclusive.

(11) “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.

(12) “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.

§ 20-559b. Service of process

By acting as an athlete agent in this state, a nonresident individual appoints the Secretary of the State as the individual’s agent for service of process in any civil action in this state related to the individual’s acting as an athlete agent in this state.

§ 20-559c. Athlete agents: Registration required; void contracts

(a) Except as otherwise provided in subsection (b) of this section, an individual may not act as an athlete agent in this state without holding a certificate of registration under section 20-559e or 20-559g.

- (b) Before being issued a certificate of registration, an individual may act as an athlete agent in this state for all purposes except signing an agency contract, if:
 - (1) A student-athlete or another person acting on behalf of the student-athlete initiates communication with the individual; and
 - (2) Within seven days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in this state.
- (c) An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract.

§ 20-559d. Registration as athlete agent; form; requirements

- (a) An applicant for registration shall submit an application for registration to the Commissioner of Consumer Protection in a form prescribed by the commissioner. The application shall be in the name of an individual and, except as provided in subsection (b) of this section, signed or otherwise authenticated by the applicant under penalty of perjury and state or contain:
 - (1) The name of the applicant and the address of the applicant's principal place of business;
 - (2) The name of the applicant's business or employer, if applicable;
 - (3) Any business or occupation engaged in by the applicant for the five years next preceding the date of submission of the application;
 - (4) A description of the applicant's:
 - (A) Formal training as an athlete agent;
 - (B) Practical experience as an athlete agent; and
 - (C) Educational background relating to the applicant's activities as an athlete agent;
 - (5) The names and addresses of three individuals not related to the applicant who are willing to serve as references;
 - (6) The name, sport and last-known team of each individual for whom the applicant acted as an athlete agent during the five years next preceding the date of submission of the application;
 - (7) The names and addresses of all persons who are:

- (A) With respect to the athlete agent's business if it is not a corporation, the partners, members, officers, managers, associates or profit-sharers of the business; and
 - (B) With respect to a corporation employing the athlete agent, the officers, directors and any shareholder of the corporation having an interest of five per cent or greater;
- (8) Whether the applicant or any person named pursuant to subdivision (7) of this subsection has been convicted of a crime that, if committed in this state, would be a felony, and identify the crime;
 - (9) Whether there has been any administrative or judicial determination that the applicant or any person named pursuant to subdivision (7) of this subsection has made a false, misleading, deceptive or **fraudulent** representation;
 - (10) Any instance in which the conduct of the applicant or any person named pursuant to subdivision (7) of this subsection resulted in the imposition of a sanction, suspension or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or educational institution;
 - (11) Any sanction, suspension or disciplinary action taken against the applicant or any person named pursuant to subdivision (7) of this subsection arising out of occupational or professional conduct; and
 - (12) Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any person named pursuant to subdivision (7) of this subsection as an athlete agent in any state.
- (b) An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another state, may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to subsection (a) of this section. The Commissioner of Consumer Protection shall accept the application and the certificate from the other state as an application for registration in this state if the application to the other state:
 - (1) Was submitted in the other state within six months next preceding the submission of the application in this state and the applicant certifies that the information contained in the application is current;

- (2) Contains information substantially similar to or more comprehensive than that required in an application submitted in this state; and
- (3) Was signed by the applicant under penalty of perjury.

§ 20-559e. Certificate of registration; issuance or denial; renewal

- (a) Except as provided in subsection (b) of this section, the Commissioner of Consumer Protection shall issue a certificate of registration to an individual who complies with subsection (a) of section 20-559d or whose application has been accepted under subsection (b) of section 20-559d.
- (b) The Commissioner of Consumer Protection may refuse to issue a certificate of registration if the commissioner determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the commissioner may consider whether the applicant has:
 - (1) Been convicted of a crime that, if committed in this state, would be a felony;
 - (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 20-559m;
 - (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) of this section, the Commissioner of Consumer Protection 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 filing an application for renewal in a form prescribed by the Commissioner of Consumer Protection. 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 filed 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) of this section, may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. The Commissioner of Consumer Protection shall accept the application for renewal from the other state as an application for renewal in this state if the application to the other state:
 - (1) Was submitted in the other state within six months next preceding the filing in this state and the applicant certifies the information contained in the application for renewal is current;
 - (2) Contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this state; and
 - (3) Was signed by the applicant under penalty of perjury.
- (f) A certificate of registration or a renewal of a registration is valid for two years.

§ 20-559f. Suspension, revocation or refusal to renew registration

- (a) The Commissioner of Consumer Protection may suspend, revoke or refuse to renew a registration for conduct that would have justified denial of registration under subsection (b) of section 20-559e.
- (b) The Commissioner of Consumer Protection may deny, suspend, revoke or refuse to renew a certificate of registration only after proper notice and an opportunity for a hearing in accordance with chapter 54.

§ 20-559g. Temporary registration

The Commissioner of Consumer Protection may issue a temporary certificate of registration while an application for registration or renewal of registration is pending.

§ 20-559h. Registration and renewal fees

An application for registration or renewal of registration shall be accompanied by a fee in the following amount:

- (1) Two hundred dollars for an initial application for registration;
- (2) Two hundred dollars for an application for registration based upon a certificate of registration or licensure issued by another state;
- (3) Two hundred dollars for an application for renewal of registration; or
- (4) Two hundred dollars for an application for renewal of registration based upon an application for renewal of registration or licensure submitted in another state.

§ 20-559i. 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 state or 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 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, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH**

YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND

- (3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.
- (d) An agency contract that does not conform to this section is voidable by the student-athlete. If a student-athlete voids an agency contract, the student-athlete is not required to pay 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.
- (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.

§ 20-559j. Notice to educational institution

- (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.

§ 20-559k. Student-athlete's right to cancel

- (a) A student-athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within fourteen days after the contract is signed.
- (b) A student-athlete may not waive the right to cancel an agency contract.
- (c) If a student-athlete cancels an agency contract, the student-athlete is not required to pay 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.

§ 20-559l. Required records

- (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) Any agency contract entered into by the athlete agent; and
 - (3) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract.
- (b) Records required by subsection (a) of this section to be retained shall be open to inspection by the Commissioner of Consumer Protection during normal business hours.

§ 20-559m. Prohibited conduct

- (a) An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, may not:
 - (1) Give any 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 any individual other than the student-athlete or another registered athlete agent.
- (b) An athlete agent may not intentionally:
 - (1) Initiate contact with a student-athlete unless registered under section 20-559e or 20-559g;
 - (2) Refuse or fail to retain or permit inspection of the records required to be retained by section 20-559l;
 - (3) Fail to register when required by section 20-559c;
 - (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 before the student-athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate as a student-athlete in that sport.

§ 20-559n. Criminal penalties

An athlete agent who violates section 20-559m is guilty of a class B misdemeanor.

§ 20-559o. Civil remedies

- (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 sections 20-559 to 20-559s, inclusive. In an action under this section, the court may award to the prevailing party costs and reasonable attorney's fees.
- (b) Damages of an educational institution under subsection (a) of this section include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student-athlete, the educational institution was injured by a violation of sections 20-559 to 20-559s, inclusive, 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 under this section does not accrue until the educational institution discovers or by the exercise of reasonable diligence should have discovered the violation by the athlete agent or former student-athlete.
- (d) Any liability of the athlete agent or the former student-athlete under this section is several and not joint.
- (e) Sections 20-559 to 20-559s, inclusive, do not restrict rights, remedies or defenses of any person under law or equity.

§ 20-559p. Administrative penalty

The Commissioner of Consumer Protection, after notice and conducting a hearing in accordance with chapter 54, may assess a civil penalty against an athlete agent not to exceed twenty-five thousand dollars for a violation of sections 20-559 to 20-559s, inclusive.

§ 20-559q. Uniformity of application and construction

In applying and construing the uniform provisions of sections 20-559 to 20-559s, inclusive, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact such uniform provisions.

§ 20-559r. Electronic Signatures in Global and National Commerce Act

The provisions of sections 20-559 to 20-559s, inclusive, governing the legal effect, validity or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures conform to the requirements of the Electronic Signatures in Global and National Commerce Act, 15 USC 7002, and supersede, modify and limit said federal act as provided in 15 USC 7002.

§ 20-559s. Severability

If any provision of sections 20-559 to 20-559s, inclusive, or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of sections 20-559 to 20-559s, inclusive, which can be given effect without the invalid provision or application, and to this end the provisions of sections 20-559 to 20-559s, inclusive, are severable.

DISTRICT OF COLUMBIA

D.C. Code § 47-2887.01 to § 47-2887.15 (LexisNexis 2004)

§ 47-2887.01. Definitions.

For the purposes of this part, the term:

(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.

(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) “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.

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

(7) “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.

(8) "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) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(10) "Registration" means registration as an athlete agent pursuant to this part.

(11) "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.

(12) "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.

§ 47-2887.02. Service of process; subpoenas.

- (a) By acting as an athlete agent in the District of Columbia, a nonresident individual appoints the Mayor as the individual's agent for service of process in any civil action in the District of Columbia related to the individual's acting as an athlete agent in the District of Columbia.
- (b) The Mayor may issue subpoenas for any material that is relevant to the administration of this part.

§ 47-2887.03. Certificate of registration required; void contracts.

- (a) Except as otherwise provided in subsection (b) of this section, an individual may not act as an athlete agent in the District of Columbia without holding a certificate of registration under § 47-2887.05 or § 47-2887.07.
- (b) Before being issued a certificate of registration, an individual may act as an athlete agent in the District of Columbia 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

- (2) Within 7 days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in the District of Columbia.
- (c) An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract.

§ 47-2887.04. Registration as athlete agent—Form; requirements.

- (a) An applicant for registration shall submit an application for registration to the Mayor in a form prescribed by the Mayor. An application filed under this section is a public record. The application must be in the name of an individual and, except as otherwise provided in subsection (b) of this section, signed or otherwise authenticated by the applicant under penalty of perjury and state or contain:
 - (1) The name of the applicant and the address of the applicant's principal place of business;
 - (2) The name of the applicant's business or employer, if applicable;
 - (3) Any business or occupation engaged in by the applicant for the 5 years next preceding the date of submission of the application;
 - (4) A description of the applicant's:
 - (A) Formal training as an athlete agent;
 - (B) Practical experience as an athlete agent; and
 - (C) Educational background relating to the applicant's activities as an athlete agent;
 - (5) The names and addresses of 3 individuals not related to the applicant who are willing to serve as references;
 - (6) The name, sport, and last known team for each individual for whom the applicant acted as an athlete agent during the 5 years next preceding the date of submission of the application;
 - (7) The names and addresses of all persons who are:
 - (A) With respect to the athlete agent's business if it is not a corporation, the partners, members, officers, managers, associates, or profit-sharers of the business; and
 - (B) With respect to a corporation employing the athlete agent, the officers, directors, and any shareholder of the corporation having an interest of 5% or greater;
 - (8) Whether the applicant or any person named pursuant to paragraph (7) of this subsection has been convicted of a crime that, if com-

mitted in the District of Columbia, would be a crime involving moral turpitude or a felony, and identify the crime;

- (9) Whether there has been any administrative or judicial determination that the applicant or any person named pursuant to paragraph (7) of this subsection has made a false, misleading, deceptive, or **fraudulent** representation;
 - (10) Any instance in which the conduct of the applicant or any person named pursuant to paragraph (7) of this subsection resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or educational institution;
 - (11) Any sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to paragraph (7) of this subsection arising out of occupational or professional conduct; and
 - (12) Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any person named pursuant to paragraph (7) of this subsection as an athlete agent in any State.
- (b) An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another State, may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to subsection (a) of this section. The Mayor shall accept the application and the certificate from the other State as an application for registration in the District of Columbia if the application to the other State:
- (1) Was submitted in the other State within 6 months next preceding the submission of the application in the District of Columbia 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 the District of Columbia; and
 - (3) Was signed by the applicant under penalty of perjury.

§ 47-2887.05. Certificate of registration—Issuance or denial; renewal.

- (a) Except as otherwise provided in subsection (b) of this section, the Mayor shall issue a certificate of registration to an individual who

complies with § 47-2887.04(a) or whose application has been accepted under § 47- 2887.04(b).

- (b) The Mayor may refuse to issue a certificate of registration if the Mayor determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the Mayor may consider whether the applicant has:
 - (1) Been convicted of a crime that, if committed in the District of Columbia, would be a crime involving moral turpitude or a felony;
 - (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 § 47-2887.13;
 - (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) of this section, the Mayor 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 Mayor. An application filed under 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) 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) of

this section, may file a copy of the application for renewal and a valid certificate of registration or licensure from the other State. The Mayor shall accept the application for renewal from the other State as an application for renewal in the District of Columbia if the application to the other State:

- (1) Was submitted in the other State within 6 months next preceding the filing in the District of Columbia 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 District of Columbia; 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 2 years.

§ 47-2887.06. Suspension, revocation, or refusal to renew registration.

- (a) The Mayor may suspend, revoke, or refuse to renew a registration for conduct that would have justified denial of registration under § 47-2887.05(b).
- (b) The Mayor may deny, suspend, revoke, or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing. Chapter 5 of Title 2 applies to this part.

§ 47-2887.07. Temporary registration.

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

§ 47-2887.08. Registration and renewal fees.

- (a) An application for registration or renewal of registration must be accompanied by a fee established pursuant to subsection (b) of this section.
- (b) The Mayor shall, by rule, establish reasonable fees for:
 - (1) An initial application for registration;
 - (2) An application for registration based upon a certificate of registration or licensure issued by another State;
 - (3) An application for renewal of registration; and

- (4) An application for renewal of registration based upon an application for renewal of registration or licensure submitted in another State.

§ 47-2887.09. Required form of contract.

- (a) An agency contract must be in a record, signed or otherwise authenticated by the parties.
- (b) An agency contract must state or 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 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, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND
 - (3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.
- (d) An agency contract that does not conform to this section is voidable by the student-athlete. If a student-athlete voids an agency contract, the student-athlete is not required to pay 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.

- (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.

§ 47-2887.10. Notice to educational institution.

- (a) Within 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 the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.
- (b) Within 72 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.

§ 47-2887.11. Student-athlete's right to cancel.

- (a) A student-athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within 14 days after the contract is signed.
- (b) A student-athlete may not waive the right to cancel an agency contract.
- (c) If a student-athlete cancels an agency contract, the student-athlete is not required to pay 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.

§ 47-2887.12. Required records.

- (a) An athlete agent shall retain the following records for a period of 5 years:
 - (1) The name and address of each individual represented by the athlete agent;
 - (2) Any agency contract entered into by the athlete agent; and
 - (3) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract

- (b) Records required by subsection (a) of this section to be retained are open to inspection by the Mayor during normal business hours.

§ 47-2887.13. Prohibited conduct.

- (a) An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, may not:
 - (1) Give any 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 any individual other than the student-athlete or another registered athlete agent.
- (b) An athlete agent may not intentionally:
 - (1) Initiate contact with a student-athlete unless registered under this part;
 - (2) Refuse or fail to retain or permit inspection of the records required to be retained by § 47-2887.12;
 - (3) Fail to register when required by § 47-2887.03;
 - (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 before the student-athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate as a student-athlete in that sport.

47-2887.14. Criminal penalties; prosecution by Attorney General.

An athlete agent who violates § 47-2887.13 is guilty of a misdemeanor and, upon conviction, is punishable by maximum fine of \$10,000 or imprisonment of 6 months, or both. Violations shall be prosecuted by the Attorney General for the District of Columbia in the name of the District of Columbia.

§ 47-2887.15. Civil remedies.

- (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

part. In an action under this section, the court may award to the prevailing party costs and reasonable attorney's fees.

- (b) Damages of an educational institution under subsection (a) of this section include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student-athlete, the educational institution was injured by a violation of this part 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 under 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) Any liability of the athlete agent or the former student-athlete under this section is several and not joint.
- (e) This part does not restrict rights, remedies, or defenses of any person under law or equity.

§ 47-2887.16. Administrative penalty.

The Mayor may assess a civil penalty against an athlete agent not to exceed \$25,000 for a violation of this part.

§ 47-2887.17. Uniformity of application and construction.

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

§ 47-2887.18. Electronic Signatures in Global and National Commerce Act.

The provisions of this part governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures conform to the requirements of section 102 of the Electronic Signatures in Global and National Commerce Act, approved June 30, 2000 (114 Stat. 467; 5 U.S.C. § 7002) ("Act"), and supersede, modify, and limit the Act.

DELAWARE

Del. Code Ann. tit. 24, § 5401 to § 5420 (2005)

§ 5401. Short title.

This chapter may be cited as the “Delaware Uniform Athlete Agents Act”.

§ 5402. Definitions.

For purposes of 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.

(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) “Board” means the Board of Athlete Agent Examiners described in § 5403 of this title.

(5) “Contact” means a communication, direct or indirect, between an agent and a student-athlete to recruit or solicit the student-athlete to enter into an agency contract.

(6) “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.

(7) "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.

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

(9) "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.

(10) "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.

(11) "Registration" means registration as an athlete agent pursuant to this chapter.

(12) "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.

(13) "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.

(14) "Substantially related" means the nature of the criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform 1 or more of the duties or responsibilities necessarily related to the provision of services by an athlete agent.

§ 5403. Board of Athlete Agent Examiners; appointments; qualifications; term; vacancies; suspension or removal; compensation; meetings; quorum.

- (a) The Board of Athlete Agent Examiners shall consist of 5 members appointed by the Governor. To serve on the Board, a public member shall not be, nor ever have been, an athlete agent, a close relative (as defined in § 5804(1) of Title 29) of an athlete agent, or ever been employed by an athlete agent.
- (b) Each member shall serve for a period of 3 years, and may succeed himself or herself for 1 additional term; provided, however, that where

a member was initially appointed to fill a vacancy, such member may succeed himself or herself for only 1 additional full term. Any person appointed to fill a vacancy on the Board shall hold office for the remainder of the unexpired term of the former member. Each term of office shall expire on the date specified in the appointment, except that each member shall serve until a successor is duly appointed.

- (c) A person who has never served on the Board may be appointed to the Board 2 consecutive times; but, no such person shall thereafter be eligible for 2 consecutive appointments. No person who has been twice appointed to the Board or who has served on the Board for 6 years within any 9-year period shall again be appointed to the Board until an interim period of at least 1 term has expired since such person last served.
- (d) A member of the Board shall be suspended or removed by the Governor for misfeasance, nonfeasance, malfeasance or neglect of duty. A member subject to disciplinary proceedings shall be disqualified from Board business until the charge is adjudicated or the matter is otherwise concluded. A Board member may appeal any suspension or removal to the Superior Court.
- (e) The provisions set forth for employees in Chapter 58 of Title 29 shall apply to all members of the Board and to all agents appointed or otherwise employed by the Board.
- (f) Board members shall be reimbursed for all necessary expenses involved in each meeting, including travel, according to the uniform policy for reimbursement of expenses established by the Division of Professional Regulation, and, in addition, shall receive not more than \$50 for each meeting attended, but not more than \$500 in any calendar year. After 10 meetings have been attended, the member shall not be compensated for any subsequent meetings attended in that year.
- (g) In the same month of each year the members shall elect, from among their number, a President, a Vice-President and a Secretary. Each officer shall serve for 1 year, and may serve no more than 2 consecutive years in the same office.
- (h) The Board shall hold regularly scheduled business meetings at least once in each quarter of a calendar year, and at such other times as the President deems necessary, or at the request of a majority of the Board members.
- (i) A majority of members shall constitute a quorum, and no action shall be taken without the affirmative vote of at least 4 members. Any member who fails to attend 3 consecutive meetings, or who fails to attend at least half of all regular business meetings during any calendar

year, shall automatically upon such occurrence be deemed to have resigned from office, and a replacement shall be appointed.

- (j) The Board shall promulgate regulations specifically identifying those crimes which are substantially related to the provision of services by an athlete agent.

§ 5404. Service of process; subpoenas.

- (a) By acting as an athlete agent in this State, a nonresident individual appoints the Board as the individual's agent for service of process in any civil action in this State related to the individual's acting as an athlete agent in this State.
- (b) The Board may issue subpoenas for any material that is relevant to the administration of this chapter.

§ 5405. Athlete agents; registration required; void contracts.

- (a) Except as otherwise provided in subsection (b) of this section, an individual may not act as an athlete agent in this State without holding a certificate of registration under § 5407 or § 5409 of this title.
- (b) Before being issued a certificate of registration, an individual may act as an athlete agent in this State for all purposes except signing an agency contract if:
 - (1) A student-athlete or another person acting on behalf of the student-athlete initiates communication with the individual; and
 - (2) Within 7 days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in this State.
- (c) An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract.

§ 5406. Registration as athlete agent; form; requirements.

- (a) An applicant for registration shall submit an application for registration to the Board in a form prescribed by the Board. An application filed under this section is a public record. The application must be in the name of an individual, and, except as otherwise provided in subsection (b) of this section, signed or otherwise authenticated by the applicant under penalty of perjury, and state or contain:

- (1) The name of the applicant, the address of the applicant's principal place of business, and the address to which a copy of service of process shall be mailed to it by the Board pursuant to § 5404 of the title;
- (2) The name of the applicant's business or employer, if applicable;
- (3) Any business or occupation engaged in by the applicant for the 5 years next preceding the date of submission of the application;
- (4) A description of the applicant's:
 - a. Formal training as an athlete agent;
 - b. Practical experience as an athlete agent; and
 - c. Educational background relating to the applicant's activities as an athlete agent;
- (5) The names and addresses of 3 individuals not related to the applicant who are willing to serve as references;
- (6) The name, sport and last known team for each individual for whom the applicant acted as an athlete agent during the 5 years next preceding the date of submission of the application;
- (7) The names and addresses of all persons who are:
 - a. With respect to the athlete agent's business, if it is not a corporation, the partners, members, officers, managers, associates or profit-sharers of the business; and
 - b. With respect to a corporation employing the athlete agent, the officers, directors and any shareholder of the corporation having an interest of 5 percent or greater;
- (8) Whether the applicant or any person named pursuant to paragraph (7) of this subsection has been convicted of a crime that, if committed in this State, would be a crime involving moral turpitude or a felony, and identify the crime;
- (9) Whether there has been any administrative or judicial determination that the applicant or any person named pursuant to paragraph (7) of this subsection has made a false, misleading, deceptive or fraudulent representation;
- (10) Any instance in which the conduct of the applicant or any person named pursuant to paragraph (7) of this subsection resulted in the imposition of a sanction, suspension or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or educational institution;
- (11) Any sanction, suspension or disciplinary action taken against the applicant or any person named pursuant to paragraph (7) of this

subsection arising out of occupational or professional conduct;
and

- (12) Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew the registration or licensure of the applicant or any person named pursuant to paragraph (7) of this subsection as an athlete agent in any state.
- (b) An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another state may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to subsection (a) of this section. The Board shall accept the application and the certificate from the other state as an application for registration in this state if the application to the other state:
- (1) Was submitted in the other state within 6 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.

§ 5407. Certificate of registration; issuance or denial; renewal.

- (a) Except as otherwise provided in subsection (b) of this section, the Board shall issue a certificate of registration to an individual who complies with § 5406(a) of this title or whose application has been accepted under § 5406(b) of this title.
- (b) The Board may refuse to issue a certificate of registration if the Board determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the Board may consider whether the applicant has:
 - (1) Been convicted of a crime that, if committed in this State, would be a crime that is substantially related to the provision of services by an athlete agent;
 - (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 § 5414 of this title;
 - (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) of this section, the Board 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 Board. An application filed under 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) 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) of this section, may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. The Board 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 6 months next preceding the filing in this State and the applicant certifies the information contained in the application for renewal is current;
 - (2) Contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this State; and
 - (3) Was signed by the applicant under penalty of perjury.
- (f) A certificate of registration or a renewal of a registration is valid for 2 years.

§ 5408. Suspension, revocation, or refusal to renew registration.

- (a) The Board may suspend, revoke or refuse to renew a registration for conduct that would have justified denial of registration under § 5407(b) of this title.
- (b) The Board may deny, suspend, revoke or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing. The provisions of Chapter 101 of Title 29 related to administrative procedures shall apply to this chapter.

§ 5409. Temporary registration.

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

§ 5410. Required form of contract.

- (a) An agency contract must be in a record signed or otherwise authenticated by the parties.
- (b) An agency contract must state or 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 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, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND
 - (3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.
- (d) An agency contract that does not conform to this section is voidable by the student-athlete. If a student-athlete voids an agency contract, the student-athlete is not required to pay 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.
 - (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.

§ 5411. Notice to educational institution.

- (a) Within 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 the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.
- (b) Within 72 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 the student-athlete has entered into an agency contract.

§ 5412. Student-athlete's right to cancel.

- (a) A student-athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within 14 days after the contract is signed.
- (b) A student-athlete may not waive the right to cancel an agency contract.
- (c) If a student-athlete cancels an agency contract, the student-athlete is not required to pay 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.

§ 5413. Required records.

- (a) An athlete agent shall retain the following records for a period of 5 years:
 - (1) The name and address of each individual represented by the athlete agent;
 - (2) Any agency contract entered into by the athlete agent; and
 - (3) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract.
- (b) Records required by subsection (a) of this section to be retained are open to inspection by the Board during normal business hours.

§ 5414. Prohibited conduct.

- (a) An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, may not:
 - (1) Give any 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 any individual other than the student-athlete or another registered athlete agent.
- (b) An athlete agent may not intentionally:
 - (1) Initiate contact with a student-athlete unless registered under this title;
 - (2) Refuse or fail to retain or permit inspection of the records required to be retained by § 5413 of this title;
 - (3) Fail to register when required by § 5405 of this title;
 - (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 before the student-athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate as a student-athlete in that sport.

§ 5415. Criminal penalties.

An athlete agent who violates § 5414 of this title is guilty of a class A misdemeanor. Upon the first offense, the athlete agent shall be fined not less than \$500 nor more than \$1,000 for each offense, and in addition, may be imprisoned for not more than 1 year. For a second or subsequent conviction, the fine shall be not less than \$1,000 nor more than \$2,000 for each offense; and in addition the athlete agent may be imprisoned for not more than 1 year.

§ 5416. Civil remedies.

- (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 under this section, the court may award to the prevailing party costs and reasonable attorney's fees.
- (b) Damages of an educational institution under subsection (a) of this section include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student-athlete, 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 under 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) Any liability of the athlete agent or the former student-athlete under this section is several and not joint.
- (e) This chapter does not restrict rights, remedies or defenses of any person under law or equity.

§ 5417. Administrative penalty.

The Board, subject to the provisions of Chapter 101 of Title 29 related to administrative procedures, may assess a civil penalty against an athlete agent not to exceed \$25,000 for a violation of this chapter.

§ 5418. Uniformity of application and construction.

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact similar statutes.

§ 5419. Electronic Signatures in Global and National Commerce Act.

The provisions of this chapter governing the legal effect, validity or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000), [FN1] and supersede, modify and limit the Electronic Signatures in Global and National Commerce Act.

§ 5420. Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

FLORIDA

Fla. Stat. Ann. § 468.451 to § 468.4571 (West 2001)

§ 468.451. Legislative findings and intent

The Legislature finds that dishonest or unscrupulous practices by agents who solicit representation of student athletes can cause significant harm to student athletes and the academic institutions for which they play. It is the intent of the Legislature to protect the interests of student athletes and academic institutions by regulating the activities of athlete agents.

§ 468.452. Definitions

For purposes of this part, the term:

(1) "Agent contract" means a contract or agreement in which a student athlete authorizes an athlete agent to represent the student in the marketing of the student's athletic ability or athletic reputation.

(2) "Athlete agent" means a person who, directly or indirectly, recruits or solicits a student athlete to enter into an agent contract, or who, for any type of financial gain, procures, offers, promises, or attempts to obtain employment or promotional fees or benefits for a student athlete with a professional sports team or as a professional athlete, or with any promoter who markets or attempts to market the student athlete's athletic ability or athletic reputation. This term includes all employees and other persons acting on behalf of an athlete agent who participate in the activities included under this subsection. The term does not include a spouse, parent, sibling, grandparent, or guardian of the student athlete or an individual acting solely on behalf of a professional sports team or professional sports organization.

(3) "Contact" means communication between an athlete agent and a student athlete, by whatever means, directly or indirectly, for the purpose of entering or soliciting entry into an agent contract.

(4) "Department" means the Department of Business and Professional Regulation.

(5) "Student athlete" means any student who:

(a) Resides in Florida, has informed, in writing, a college or university of the student's intent to participate in that school's intercollegiate athletics, or who does participate in that school's intercollegiate athletics and is eligible to do so; or

(b) Does not reside in Florida, but has informed, in writing, a college or university in Florida of the student's intent to participate in that school's intercollegiate athletics, or who does participate in that school's intercollegiate athletics and is eligible to do so.

(6) "Financial services" means the counseling on or the making or execution of investment and other financial decisions by the agent on behalf of the student athlete.

(7) "Participation" means practicing, competing, or otherwise representing a college or university in intercollegiate athletics.

§ 468.453. Licensure required; qualifications; examination; bond; exception; license nontransferable

- (1) Any person who practices as an athlete agent in this state must be licensed pursuant to this part.
- (2) A person shall be licensed as an athlete agent if the applicant:
 - (a) Is at least 18 years of age.
 - (b) Is of good moral character.
 - (c) Has completed the application form and remitted an application fee not to exceed \$500, an active licensure fee not to exceed \$2,000, and all other applicable fees provided for in this part or in chapter 455.
 - (d) Has submitted to the department a fingerprint card for a criminal history records check. The fingerprint card shall be forwarded to the Division of Criminal Justice Information Systems within the Department of Law Enforcement for purposes of processing the fingerprint card to determine if the applicant has a criminal history record. The fingerprint card shall also be forwarded to the Federal Bureau of Investigation for purposes of processing the fingerprint card to determine if the applicant has a criminal history record. The information obtained by the processing of the fingerprint card by the Florida Department of Law Enforcement and the Federal Bureau of Investigation shall be sent to the department for the purpose of determining if the applicant is statutorily qualified for licensure.

- (e) Has not in any jurisdiction, within the preceding 5 years, been convicted or found guilty of or entered a plea of nolo contendere for, regardless of adjudication, a crime which relates to the applicant's practice or ability to practice as an athlete agent.
- (3) An unlicensed individual may act as an athlete agent if:
 - (a) A student athlete or person acting on the athlete's behalf initiates communication with the individual; and
 - (b) Within 7 days after an initial act as an athlete agent, the individual submits an application for licensure.
 - (4) A license issued to an athlete agent is not transferable.
 - (5) By acting as an athlete agent in this state, a nonresident individual appoints the department as the individual's agent for service of process in any civil action related to the individual's acting as an athlete agent.
 - (6) The department may issue a temporary license while an application for licensure is pending. If the department issues a notice of intent to deny the license application, the initial temporary license expires and may not be extended during any proceeding or administrative or judicial review.
 - (7) (a) An individual who has submitted an application and holds a certificate, registration, or license as an athlete agent in another state may submit a copy of the application and certificate, registration, or license from the other state in lieu of submitting an application in the form prescribed pursuant to this section. The department must accept the application and the certificate from the other state as an application for registration in this state if the application in the other state:
 - 1. Was submitted in the other state within 6 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.
 - (b) An applicant applying under this subsection must meet all other requirements for licensure as provided by this part.

§ 468.4535. Exceptions

This part does not apply when a student is ineligible to participate in a particular intercollegiate sport unless:

- (1) The student athlete's eligibility to participate is restored in that particular sport; or
- (2) The student is or becomes eligible to participate in a different intercollegiate sport, in which case this part shall apply for the different intercollegiate sport.

§ 468.4536. Renewal of licensure

The department shall renew a license pursuant to procedures provided for in s. 455.203

§ 468.454. Contracts

- (1) An agent contract must be in a record, signed or otherwise authenticated by the parties.
- (2) An agent contract must state:
 - (a) The amount and method of calculating the consideration to be paid by the student athlete for services to be provided by the athlete agent and any other consideration the agent has received or will receive from any other source under the contract;
 - (b) The name of any person not listed in the licensure application who will be compensated because the student athlete signed the agent contract;
 - (c) A description of any expenses that the student athlete agrees to reimburse;
 - (d) A description of the services to be provided to the student athlete;
 - (e) The duration of the contract; and
 - (f) The date of execution.
- (3) An agent 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 THE 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 AFTER ENTERING INTO THE CONTRACT, YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND
 3. YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. HOWEVER, CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.
- (4) An agent contract that does not conform to this section is voidable by the student athlete. If a student athlete voids an agent contract, the student athlete is not required to pay any consideration or return any consideration received from the athlete agent to induce the student athlete to enter into the contract.
 - (5) The athlete agent shall give a record of the signed or authenticated agent contract to the student athlete at the time of execution.
 - (6) Within 72 hours after entering into an agent contract or before the next scheduled athletic event in which the student athlete may participate, whichever occurs first, the athlete agent must 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.
 - (7) Within 72 hours after entering into an agent contract or before the next athletic event in which the student athlete may participate, whichever occurs first, the student athlete must inform the athletic director of the educational institution at which the student athlete is enrolled that he or she has entered into an agent contract.
 - (8) A student athlete may cancel an agent contract by giving notice of the cancellation to the athlete agent in a record within 14 days after the contract is signed.
 - (9) A student athlete may not waive the right to cancel an agent contract.
 - (10) If a student athlete cancels an agent contract, the student athlete is not required to pay any consideration or return any consideration received from the athlete agent to induce the student athlete to enter into the contract.
 - (11) An athlete agent shall not enter into an agent contract that purports to or takes effect at a future time after the student athlete no longer has remaining eligibility to participate in intercollegiate athletics. Such a contract is void and unenforceable.
 - (12) An agent contract between a student athlete and a person not licensed under this part is void and unenforceable.

§ 468.455. Repealed by Laws 1995, c. 95-307, § 15, eff. Oct. 1, 1995

§ 468.456. Prohibited acts

- (1) The following acts shall be grounds for the disciplinary actions provided for in subsection (3):
 - (a) A violation of any law relating to the practice as an athlete agent including, but not limited to, violations of this part and chapter 455 and any rules promulgated thereunder.
 - (b) Failure to account for or to pay, within a reasonable time, not to exceed 30 days, assets belonging to another which have come into the control of the athlete agent in the course of conducting business as an athlete agent.
 - (c) Any conduct as an athlete agent which demonstrates bad faith or dishonesty.
 - (d) Commingling money or property of another person with the athlete agent's money or property. Every athlete agent shall maintain a separate trust or escrow account in an insured bank or savings and loan association located in this state in which shall be deposited all proceeds received for another person through the athlete agent.
 - (e) Accepting as a client a student athlete referred by and in exchange for any consideration made to an employee of or a coach for a college or university located in this state.
 - (f) Offering anything of value to any person to induce a student athlete to enter into an agreement by which the agent will represent the student athlete. However, negotiations regarding the agent's fee shall not be considered an inducement.
 - (g) Knowingly providing financial benefit from the licensee's conduct of business as an athlete agent to another athlete agent whose license to practice as an athlete agent is suspended or has been permanently revoked within the previous 5 years.
 - (h) Committing mismanagement or misconduct as an athlete agent which causes financial harm to a student athlete or college or university.
 - (i) Failing to include the athlete agent's name and license number in any advertising related to the business of an athlete agent. Advertising shall not include clothing or other novelty items.
 - (j) Publishing or causing to be published false or misleading information or advertisements, or giving any false information or

making false promises to a student athlete concerning employment or financial services.

- (k) Violating or aiding and abetting another person to violate the rules of the athletic conference or collegiate athletic association governing a student athlete or student athlete's college or university.
 - (l) Having contact, as prohibited by this part, with a student athlete.
 - (m) Postdating agent contracts.
 - (n) Having an athlete agent certification acted against by a professional athletic club or association.
 - (o) Being employed to illegally recruit or solicit student athletes by being utilized by or otherwise collaborating with a person known to have been convicted or found guilty of, or to have entered a plea of nolo contendere to, a violation of s. 468.45615 regardless of adjudication.
- (2) This part does not prohibit an athlete agent from:
- (a) Sending to a student athlete written materials provided that the athlete agent simultaneously sends an identical copy of such written materials to the athletic director, or the director's designee, of the college or university in which the student athlete is enrolled or to which the student athlete has provided a written intent to participate in intercollegiate athletics; and
 - (b) Otherwise contacting a student athlete, provided that the student athlete initiates the contact with the athlete agent and the athlete agent gives prior notice, as provided for by rule of the department, to the college or university in which the student athlete is enrolled or to which the student athlete has provided a written intent to participate in intercollegiate athletics.
- (3) When the department finds any person guilty of any of the prohibited acts set forth in subsection (1), the department may enter an order imposing one or more of the penalties provided for in s. 455.227, and an administrative fine not to exceed \$25,000 for each separate offense. In addition to any other penalties or disciplinary actions provided for in this part, the department shall suspend or revoke the license of any athlete agent licensed under this part who violates paragraph (1)(f) or paragraph (1)(o) or s. 468.45615

§ 468.4561. Unlicensed activity; penalties for violations

No person shall conduct business as an athlete agent unless such person holds an active license pursuant to this part, and no person shall knowingly aid or abet another person to conduct business as an unlicensed athlete agent. For purposes of this section, "aid or abet" means to actively assist in the recruitment or solicitation of a student athlete. Violation of this section shall be a felony of the third degree, punishable as provided in ss. 775.082, 775.083, 775.084, 775.089, and 775.091.

§ 468.45615. Provision of illegal inducements to athletes prohibited; penalties; license suspension

- (1) Any person who violates s. 468.456(1)(f) is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, s. 775.089, or s. 775.091.
- (2) (a) Regardless of whether adjudication is withheld, any person convicted or found guilty of, or entering a plea of nolo contendere to, the violation described in subsection (1) shall not employ, utilize, or otherwise collaborate with a licensed or unlicensed athlete agent in Florida to illegally recruit or solicit student athletes. Any person who violates the provisions of this subsection is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084 s. 775.089, or s. 775.091.
- (b) Regardless of whether adjudication is withheld, any person who knowingly actively assists in the illegal recruitment or solicitation of student athletes for a person who has been convicted or found guilty of, or entered a plea of nolo contendere to, a violation of this section is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, s. 775.089 or s. 775.091.
- (3) In addition to any other penalties provided in this section, the court may suspend the license of the person pending the outcome of any administrative action against the person by the department.
- (4) (a) An athlete agent, with the intent to induce a student athlete to enter into an agent contract, may not:
 1. Give any 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 agent contract; or

3. Furnish anything of value to any individual other than the student athlete or another athlete agent.
- (b) An athlete agent may not intentionally:
1. Initiate contact with a student athlete unless licensed under this part;
 2. Refuse or fail to retain or permit inspection of the records required to be retained by s. 468.4565;
 3. Provide materially false or misleading information in an application for licensure;
 4. Predate or postdate an agent contract;
 5. Fail to give notice of the existence of an agent contract as required by s. 468.454(6) or
 6. Fail to notify a student athlete before the student athlete signs or otherwise authenticates an agent contract for a sport that the signing or authentication may make the student athlete ineligible to participate as a student athlete in that sport.
- (c) An athlete agent who violates this subsection commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

§ 468.4562. Civil action by institution

- (1) A college or university may sue for damages, as provided by this section, any person who violates this part. A college or university may seek equitable relief to prevent or minimize harm arising from acts or omissions which are or would be a violation of this part.
- (2) For purposes of this section, a college or university is damaged if, because of activities of the person, the college or university is penalized, disqualified, or suspended from participation in intercollegiate athletics by a national association for the promotion and regulation of intercollegiate athletics, by an intercollegiate athletic conference, or by reasonable self-imposed disciplinary action taken to mitigate sanctions likely to be imposed by such organization and, because of that penalty, disqualification, suspension, or action the institution:
 - (a) Loses revenue from media coverage of a sports contest;
 - (b) Loses the right to grant an athletic scholarship;
 - (c) Loses the right to recruit an athlete;
 - (d) Is prohibited from participating in postseason athletic competition;
 - (e) Forfeits an athletic contest; or

- (f) Otherwise suffers an adverse financial impact.
- (3) An institution that prevails in a suit brought under this section may recover:
 - (a) Actual damages;
 - (b) Punitive damages;
 - (c) Treble damages;
 - (d) Court costs; and
 - (e) Reasonable attorney's fees.
- (4) A right of action under 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.
- (5) Any liability of the athlete agent or the former student athlete under this section is several and not joint.
- (6) This part does not restrict rights, remedies, or defenses of any person under law or equity.

§ 468.4563. Repealed by Laws 2002, c. 2002-24, § 8, eff. July 1, 2002

§ 468.4564. Repealed by Laws 2002, c. 2002-24, § 8, eff. July 1, 2002

§ 468.4565. Business records requirement

- (1) An athlete agent shall establish and maintain complete financial and business records. The athlete agent shall save each entry into a financial or business record for at least 5 years from the date of entry. These records must include:
 - (a) The name and address of each individual represented by the athlete agent;
 - (b) Any agent contract entered into by the athlete agent; and
 - (c) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student athlete to enter into an agent contract.
- (2) The department shall have access to and shall have the right to inspect and examine the financial or business records of an athlete agent during normal business hours. Refusal or failure of an athlete agent to provide the department access to financial and business records shall be the basis for disciplinary action by the department pursuant to s. 455.225. The department may exercise its subpoena powers to obtain the financial and business records of an athlete agent.

§ 468.457. Rulemaking authority

The department shall adopt rules necessary to administer and enforce this part.

§ 468.4571. Repealed by Laws 2000, c. 2000-332, §1, eff. June 20, 2000

GEORGIA

Ga. Code Ann. § 43-4A-1 to § 43-4A-1- 20 (2005)

§ 43-4A-1. Short title.

This chapter shall be known and may be cited as the “Uniform Athlete Agents Act.”

§ 43-4A-2. Definitions.

As used in this chapter, the term:

(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. This term includes an individual who represents to the public that the individual is an athlete agent. This term does not include a spouse, parent, sibling, grandparent, or guardian of the student athlete or an individual acting solely on behalf of a professional sports team or professional sports organization.

(3) “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 and the athletic program for females, as appropriate.

(4) “Commission” means the Georgia Athlete Agent Regulatory Commission created in Code Section 43-4A-3.

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

(6) “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.

(7) "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.

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

(9) "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.

(10) "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.

(11) "Registration" means registration as an athlete agent pursuant to this chapter.

(12) "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.

(13) "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.

43-4A-3. Creation of commission; members; terms; removal; election of chairperson and vice chair person; quorum; rules and standards of conduct; reimbursement of members; secretary.

- (a) (1) There shall be a commission for the regulation of athlete agents in the State of Georgia to be known as the Georgia Athlete Agent Regulatory Commission.
- (2) Until July 1, 2003, the commission shall consist of six members with an interest in college athletics to be appointed as follows:
- (A) The Governor shall appoint two commission members;
 - (B) The President of the Senate shall appoint two commission members; and

- (C) The Speaker of the House of Representatives shall appoint two commission members.
- (3) On and after July 1, 2003, the commission shall consist of five members with an interest in college athletics to be appointed as follows:
 - (A) The Governor shall appoint two commission members;
 - (B) The President of the Senate shall appoint one commission member; and
 - (C) The Speaker of the House of Representatives shall appoint two commission members.
 - (4) The terms of the members of the Georgia Athlete Agent Regulatory Commission serving on March 1, 2003, shall continue until June 30, 2003, at which time their terms shall end. Thereafter, successors to such board members shall be appointed in accordance with paragraph (3) of this subsection.
 - (5) All members of the commission shall be citizens of the United States and residents of Georgia. The term of each commission member shall be for a period of three years and commission members may be eligible for reappointment, subject to the provisions of this chapter. If a vacancy occurs on the commission, the officer who originally appointed such member shall appoint a successor who shall take office immediately and serve the remainder of the unexpired term. The commission members and their successors shall have and exercise all the powers and authority vested by law in said commission.
- (b) The effective date of the appointments pursuant to paragraph (4) of subsection (a) of this Code section shall be July 1, 2003.
 - (c) No person who has served two successive complete terms on the commission shall be eligible for reappointment until after the lapse of one year. Appointment to fill an unexpired term is not to be considered as a complete term.
 - (d) The Governor shall remove from the commission any member for cause as provided in Code Section 43-1-17.
 - (e) The commission shall elect annually a chairperson and a vice chairperson.
 - (f) A majority of the commission shall constitute a quorum for the transaction of business.
 - (g) The commission may promulgate and from time to time amend rules and standards of conduct for athlete agents appropriate for the protection of the residents of the state.

- (h) Members of the commission shall be reimbursed as provided in subsection (f) of Code Section 43-1-2.
- (i) The division director shall be the secretary of the commission and provide all administrative services.

43-4A-4. Service by division director as service of process agent for nonresident athlete agents.

By acting as an athlete agent in this state, a nonresident individual appoints the division director of the professional licensing board as the individual's agent for service of process in any civil action in this state related to the individual's acting as an athlete agent in this state

43-4A-4.1. Certification of registration required; exception; agency contract void for noncompliance.

- (a) Except as otherwise provided in subsection (b) of this Code section, an individual may not act as an athlete agent in this state without holding a certificate of registration under this chapter.
- (b) Before being issued a certificate of registration, an individual may act as an athlete agent in this state for all purposes, except signing an agency contract, if:
 - (1) A student athlete or another person acting on behalf of the student athlete initiates communication with the individual; and
 - (2) Within seven days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in this state.
- (c) An agency contract resulting from conduct in violation of this Code section is void and the athlete agent shall return any consideration received under the contract.

43-4A-5. Application for registration.

An applicant for registration shall submit an application for registration to the commission in a form prescribed by the commission. An application filed under this Code section is a public record. The application must be in the name of an individual and state or contain the following and any other information required by the commission:

- (1) The name of the applicant and the address of the applicant's residence and principal place of business;

- (2) The name of the applicant's business or employer, if applicable;
- (3) Any business or occupation engaged in by the applicant for the five years next preceding the date of submission of the application;
- (4) A description of the applicant's:
 - (A) Formal training as an athlete agent;
 - (B) Practical experience as an athlete agent; and
 - (C) Educational background relating to the applicant's activities as an athlete agent;
- (5) The names and addresses of three individuals not related to the applicant who are willing to serve as references;
- (6) The name, sport, and last known team for each individual for whom the applicant acted as an athlete agent during the five years next preceding the date of submission of the application;
- (7) The names and addresses of all persons who are:
 - (A) With respect to the athlete agent's business if it is not a corporation, the partners, members, officers, managers, associates, or profit sharers of the business; and
 - (B) With respect to a corporation employing the athlete agent, the officers, directors, and any shareholder of the corporation having an interest of 5 percent or greater;
- (8) Whether the applicant or any person named pursuant to paragraph (7) of this Code section has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony, and identify the crime;
- (9) Whether there has been any administrative or judicial determination that the applicant or any person named pursuant to paragraph (7) of this Code section has made a false, misleading, deceptive, or **fraudulent** representation;
- (10) Any instance in which the conduct of the applicant or any person named pursuant to paragraph (7) of this Code section resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student athlete or educational institution;
- (11) Any sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to paragraph (7) of this Code section arising out of occupational or professional conduct; and
- (12) Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew the registration or licen-

sure of the applicant or any person named pursuant to paragraph (7) of this Code section as an athlete agent in any state.

43-4A-6. Evaluation and investigation of applicant. Reserved. Repealed by Ga. L. 2003, p. 774, § 7, effective June 4, 2003.

43-4A-7. Grounds for refusal to issue registration; application for renewal; two year validity period for certificate.

- (a) The commission may refuse to issue a certificate of registration if the commission determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the commission may consider whether the applicant has:
 - (1) Been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony;
 - (2) Made a material 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 this chapter;
 - (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.
- (b) In making a determination under subsection (a) of this Code section, the commission 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.
- (c) The refusal to grant a registration shall not be considered to be a contested case within the meaning of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Notice and hearing within the meaning of such chapter shall not be required. Notice of refusal to grant a

registration shall be sent by registered mail or statutory overnight delivery or personal service setting forth the particular reasons for the refusal. The written notice shall be sent to the applicant's address of record with the commission and the applicant shall be allowed to appear before the commission if the applicant requests to do so in writing.

- (d) An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the commission. An application filed under this subsection is a public record.
- (e) A certificate of registration or a renewal of a registration is valid for a period of up to two years.

43-4A-8. Discipline of registered agents; notice and hearing required.

- (a) The commission may suspend, revoke, or refuse to renew a registration or may discipline a person registered by the commission for conduct that would have justified denial of registration under Code Section 43-4A-7.
- (b) The commission may discipline, suspend, revoke, or refuse to renew a certificate of registration only after proper notice and an opportunity for a hearing.
- (c) The provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," shall be applicable to the commission and the provisions of this chapter.

Laws 1988, p. 651, § 1; Laws 1989, p. 370, § 5; Laws 2003, Act 347, § 9, eff. June 4, 2003; Laws 2005, Act 19, § 43, eff. April 7, 2005.

43-4A-9. Fee for registration or renewal.

An application for registration or renewal of registration must be accompanied by such fee as shall be prescribed by the commission and a renewal bond, if applicable. The fee shall be the same for all applicants regardless of previous or current registrations or licenses in other states or jurisdictions as an athlete agent.

43-4A-10. Temporary registration.

The commission may issue a temporary certificate of registration while an application for registration or renewal of registration is pending, upon receipt by the commission of a completed application for registration, surety

bond, and fee and after approval by the chairperson of the commission. The division director may in his or her discretion issue a temporary registration to the applicant, which registration shall have the same force and effect as a permanent registration until the next regular meeting of the commission when the temporary registration shall become void. A temporary registration may be voided at any time.

43-4A-11. Required records; inspection by commission.

- (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) Any agency contract entered into by the athlete agent; and
 - (3) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student athlete to enter into an agency contract.
- (b) Records required by subsection (a) of this Code section to be retained are open to inspection by the commission during normal business hours.

43-4A-12. Penalty for violation.

An athlete agent who violates Code Section 43-4A-16 shall be guilty of a felony and, upon conviction, shall be punished by a fine of not less than \$5,000.00 nor more than \$100,000.00, by imprisonment of one to five years, or both such fine and imprisonment.

43-4A-13. Surety bond requirement; suspension for failure to maintain.

- (a) An athlete agent shall deposit or have deposited with the commission, prior to the issuance of a registration or renewal of a registration, a surety bond in the penal sum of not less than \$10,000.00, as established by the commission. Such surety bond shall be executed in the favor of the state with a surety company authorized to do business in this state and conditioned to pay damages in the amount of such bond to any athletic department aggrieved by any act of the principal named in such bond, which act is in violation of Code Section 43-4A-1 or would be grounds for revocation of a license under this chapter. If more than one athletic department suffers damages by the actions of an athlete agent, each athletic department shall receive a pro rata share

of the amount of the bond based on the entitlement of one share of such amount of the bond for each student athlete who loses his or her eligibility to participate in intercollegiate sports contests as a member of a sports team at an institution of higher education as a result of actions of the athlete agent.

- (b) If any registrant fails to maintain such bond so as to comply with the provisions of this Code section, the registration issued to the athlete agent shall be suspended until such time as a new bond is obtained. An athlete agent whose registration is suspended pursuant to this Code section shall not carry on any business as an athlete agent during the period of suspension.

43-4A-14. Prohibited activities of athlete agent.

- (a) An athlete agent shall not, with the intent to induce a student athlete to enter into an agency contract:
 - (1) Give any 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:
 - (1) Initiate contact with a student athlete unless registered under this chapter;
 - (2) Refuse or fail to retain or permit inspection of the records required to be retained by this chapter;
 - (3) Fail to register when required by this chapter;
 - (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 before the student athlete signs or otherwise authenticates an agency contract for a particular sport that such signing or authentication may make the student athlete ineligible to participate as a student athlete in that sport.

Laws 1988, p. 651, § 1; Laws 2003, Act 347, § 15, eff. June 4, 2003.

HISTORICAL AND STATUTORY NOTES

The 2003 amendment by Act 347 rewrote chapter 4A. Prior to amendment, § 43-4A-14 provided:

“If any registrant fails to maintain such bond so as to comply with the provisions of Code Section 43-4A-13, the registration issued to the athlete agent shall be suspended until such time as a new bond is obtained. An athlete agent whose registration is suspended pursuant to this Code section shall not carry on business as an athlete agent during the period of suspension.”

Uniform Law

This section is based upon § 14 of the Uniform Athlete Agents Act (2000). See Vol. 7, Pt. I, Uniform Laws Annotated, Master edition, or ULA Database on Westlaw.

43-4A-15. Civil penalty.

The commission may assess a civil penalty against an athlete agent not to exceed \$25,000.00 for a violation of this chapter.

43-4A-16. Notice of existence of contract to athletic director of educational institution.

- (a) Within 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 the athlete agent has reasonable grounds to believe the student athlete intends to enroll.
- (b) Within 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 he or she has entered into an agency contract.

43-4A-16.1. Requirements for agency contract; notice to student athlete; penalty for noncompliance; record for student athletes.

- (a) An agency contract must be in a record that is signed or otherwise authenticated by the parties.
- (b) An agency contract must state or 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 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, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND
 - (3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.”
- (d) An agency contract that does not conform to this Code 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.
- (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.

43-4A-17. Cancellation of contract by student athlete.

- (a) A student athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within 14 days after the contract is signed.
- (b) A student athlete may not waive the right to cancel an agency contract.
- (c) If a student athlete cancels an agency contract, the student athlete is not required to pay 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.

43-4A-18. Uniformity in application between states.

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

43-4A-19. Electronic signatures.

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

43-4A-20. Damages to educational institution; recovery.

- (a) An educational institution has a right of action against an athlete agent or former student athlete for damages caused by a violation of this chapter. In an action under this Code section, the court may award to the prevailing party costs and reasonable attorney's fees.
- (b) Damages to an educational institution under subsection (a) of this Code section include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student athlete, 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 under this Code 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) Any liability of the athlete agent or the former student athlete under this Code section is several and not joint.
- (e) This chapter does not restrict rights, remedies, or defenses of any person under law or equity.

Laws 2000, p. 1396, 5; Laws 2003, Act 347, § 22, eff. June 4, 2003.

HISTORICAL AND STATUTORY NOTES

The 2003 amendment by Act 347 rewrote chapter 4A. Prior to amendment, § 43-4A-20 provides:

- “(a) An institution of higher education may bring a civil action for recovery of damages against an athlete agent if the institution of higher education is damaged by the acts of the athlete agent or the athlete agent’s representative or employee in violation of this chapter. Such action shall be brought within four years after the right of action accrues.
- “(b) An institution of higher education is presumed to be damaged by the acts of an athlete agent or the athlete agent’s representative or employee if, because of those acts:
 - “(1) The institution of higher education is penalized, suspended, or disqualified from participation in one or more interscholastic or intercollegiate athletic events by the National Collegiate Athletic Association or by an intercollegiate athletic conference; and
 - “(2) As a result of said penalty, suspension, or disqualification, the institution of higher education suffers an adverse financial impact due to:
 - “(A) Loss of revenue from media coverage of a sports contract;
 - “(B) Loss of the right to grant an athletic scholarship;
 - “(C) Loss of the right to recruit an athlete;
 - “(D) Loss of the right to participate in a postseason athletic competition;
 - “(E) Forfeiture of an athletic contest; or
 - “(F) Loss of other discernible opportunities through which the institution would have realized revenue.

“(c) An institution of higher education that prevails in an action brought under this Code section may recover actual damages, punitive damages, court costs, and reasonable attorneys’ fees.”

Uniform Law

This section is based upon § 16 of the Uniform Athlete Agents Act (2000). See Vol. 7, Pt. I, Uniform Laws Annotated, Master edition, or ULA Database on Westlaw.

IDAHO

Idaho Code Ann. § 54-4801 to § 54- 4820 (2003)

TITLE 54. PROFESSIONS, VOCATIONS, AND BUSINESSES

CHAPTER 48. UNIFORM ATHLETE AGENTS ACT

§ 54-4801. Short title.

This chapter may be cited as the “Uniform Athlete Agents Act.”

§ 54-4802. Definitions—As used 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.

(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) “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.

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

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

(8) "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) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(10) "Registration" means registration as an athlete agent pursuant to this chapter.

(11) "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.

(12) "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.

§ 54-4803. Administration—Service of process—Subpoenas.

- (a) The department of self-governing agencies, by and through the bureau of occupational licenses, hereinafter referred to as the department, shall administer this chapter.
- (b) By acting as an athlete agent in this state, a nonresident individual appoints the department as the individual's agent for service of process in any civil action in this state related to the individual's acting as an athlete agent in this state.
- (c) The department may issue subpoenas for any material that is relevant to the administration of this chapter.

§ 54-4804. Athlete agents—Registration required—Void contracts.

- (a) Except as otherwise provided in subsection (b) of this section, an individual may not act as an athlete agent in this state without holding a certificate of registration under section 54-4806 or 54-4808, Idaho Code.
- (b) Before being issued a certificate of registration, an individual may act as an athlete agent in this state for all purposes except signing an agency contract, if:
 - (1) A student-athlete or another person acting on behalf of the student-athlete initiates communication with the individual; and
 - (2) Within seven (7) days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in this state.
- (c) An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract.

§ 54-4805. Registration as athlete agent—Form—Requirements.

- (a) An applicant for registration shall submit an application for registration to the department in a form prescribed by the department. An application filed under this section is a public record. The application must be in the name of an individual and, except as otherwise provided in subsection (b) of this section, signed or otherwise authenticated by the applicant under penalty of perjury and state or contain:
 - (1) The name of the applicant and the address of the applicant's principal place of business;
 - (2) The name of the applicant's business or employer, if applicable;
 - (3) Any business or occupation engaged in by the applicant for the five (5) years next preceding the date of submission of the application;
 - (4) A description of the applicant's:
 - (A) Formal training as an athlete agent;
 - (B) Practical experience as an athlete agent; and
 - (C) Educational background relating to the applicant's activities as an athlete agent;
 - (5) The names and addresses of three (3) individuals not related to the applicant who are willing to serve as references;

- (6) The name, sport and last known team for each individual for whom the applicant acted as an athlete agent during the five (5) years next preceding the date of submission of the application;
 - (7) The names and addresses of all persons who are:
 - (A) With respect to the athlete agent's business, if it is not a corporation, the partners, members, officers, managers, associates or profit sharers of the business; and
 - (B) With respect to a corporation employing the athlete agent, the officers, directors, and any shareholder of the corporation having an interest of five percent (5%) or greater;
 - (8) Whether the applicant or any person named pursuant to paragraph (7) of this subsection has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony, and identify the crime;
 - (9) Whether there has been any administrative or judicial determination that the applicant or any person named pursuant to paragraph (7) of this subsection has made a false, misleading, deceptive or **fraudulent** representation;
 - (10) Any instance in which the conduct of the applicant or any person named pursuant to paragraph (7) of this subsection resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or educational institution;
 - (11) Any sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to paragraph (7) of this subsection arising out of occupational or professional conduct; and
 - (12) Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any person named pursuant to paragraph (7) of this subsection as an athlete agent in any state.
- (b) An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another state, may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to subsection (a) of this section. The department shall accept the application and the certificate from the other state as an application for registration in this state if the application to the other state:
- (1) Was submitted in the other state within six (6) 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.

§ 54-4806. Certificate of registration—Issuance or denial—Renewal.

- (a) Except as otherwise provided in subsection (b) of this section, the department shall issue a certificate of registration to an individual who complies with section 54-4805(a), Idaho Code, or whose application has been accepted under section 54-4805(b), Idaho Code.
- (b) The department may refuse to issue a certificate of registration if the department determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the department may consider whether the applicant has:
 - (1) Been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony;
 - (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 54-4814, Idaho Code;
 - (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) of this section, the department 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 department. An application filed under 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) 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) of this section, may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. The department 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 (6) months next preceding the filing in this state and the applicant certifies the information contained in the application for renewal is current;
 - (2) Contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this state; and
 - (3) Was signed by the applicant under penalty of perjury.
- (f) A certificate of registration or a renewal of a registration is valid for two (2) years.

§ 54-4807. Suspension, revocation or refusal to renew registration.

- (a) The department may suspend, revoke or refuse to renew a registration for conduct that would have justified denial of registration under section 54-4806(b), Idaho Code.
- (b) The department may deny, suspend, revoke or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing. The provisions of chapter 52, title 67, Idaho Code, shall apply to this chapter.

§ 54-4808. Temporary registration.

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

§ 54-4809. Registration and renewal fees—Deposit—Appropriation.

- (1) An application for registration or renewal of registration must be accompanied by a fee, in an amount prescribed by the department but not to exceed two hundred fifty dollars (\$250) for any registration period, for the following:
 - (a) An initial application for registration;
 - (b) An application for registration based upon a certificate of registration or licensure issued by another state;
 - (c) An application for renewal of registration; or
 - (d) An application for renewal of registration based upon an application for renewal of registration or licensure submitted in another state.
- (2) All fees received under the provisions of this chapter shall be deposited in the state treasury to the credit of the occupational licenses fund and all costs and expenses incurred by the department under the provisions of this chapter shall be a charge against and paid from said fund for such purposes. Notwithstanding the provisions of any other law, the funds collected hereunder shall be immediately available for the administration of this chapter. In no event will the occupational licenses fund be obligated to pay any claims which, in aggregate with claims already paid, exceed the income to the occupational licenses fund which has been derived by the application of this chapter.
- (3) The money paid into the occupational licenses fund is continuously appropriated to the department for expenditure in the manner prescribed herein to defray the expenses of the department in carrying out and enforcing the provisions of this chapter.

§ 54-4810. Required form of contract.

- (a) An agency contract must be in a record, signed or otherwise authenticated by the parties
- (b) An agency contract must state or 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 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, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND
 - (3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.
- (d) An agency contract that does not conform to this section is voidable by the student-athlete. If a student-athlete voids an agency contract, the student-athlete is not required to pay 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.
- (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.

§ 54-4811. Notice to educational institution.

- (a) Within seventy-two (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 the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.

- (b) Within seventy-two (72) 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.

§ 54-4812. Student-athlete's right to cancel.

- (a) A student-athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within fourteen (14) days after the contract is signed.
- (b) A student-athlete may not waive the right to cancel an agency contract.
- (c) If a student-athlete cancels an agency contract, the student-athlete is not required to pay 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.

§ 54-4813. Required records.

- (a) An athlete agent shall retain the following records for a period of five (5) years:
 - (1) The name and address of each individual represented by the athlete agent;
 - (2) Any agency contract entered into by the athlete agent; and
 - (3) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract.
- (b) Records required by subsection (a) of this section to be retained are open to inspection by the department during normal business hours.

§ 54-4814. Prohibited conduct.

- (a) An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, may not:
 - (1) Give any 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 any individual other than the student-athlete or another registered athlete agent.

- (b) An athlete agent may not intentionally:
- (1) Initiate contact with a student-athlete unless registered under this chapter;
 - (2) Refuse or fail to retain or permit inspection of the records required to be retained by section 54-4813, Idaho Code;
 - (3) Fail to register when required by section 54-4804, Idaho Code;
 - (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 before the student-athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate as a student-athlete in that sport.

§ 54-4815. Criminal penalties.

An athlete agent who violates section 54-4814, Idaho Code, shall be guilty of a misdemeanor.

§ 54-4816. Civil remedies.

- (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 under this section, the court may award to the prevailing party costs and reasonable attorney's fees.
- (b) Damages of an educational institution under subsection (a) of this section include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student-athlete, 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 under 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) Any liability of the athlete agent or the former student-athlete under this section is several and not joint.

- (e) This chapter does not restrict rights, remedies or defenses of any person under law or equity.

§ 54-4817. Administrative penalty.

The department may assess a civil penalty against an athlete agent not to exceed twenty-five thousand dollars (\$25,000) for a violation of this chapter.

§ 54-4818. Uniformity of application and construction.

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 54-4819. Electronic signatures in global and national commerce act.

The provisions of this chapter governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures conform to the requirements of section 102 of the electronic signatures in global and national commerce act, public law 106-229, 114 Stat. 464 (2000), and supersede, modify and limit the electronic signatures in global and national commerce act.

§ 54-4820. Severability.

The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this chapter.

INDIANA

Ind. Code Ann. § 25-5.2-1 to § 25-5.2-2-16 (LexisNexis 2006)

§ 25-5.2-1-1. Short title.

This article may be cited as the Uniform Athlete Agents Act.

§ 25-5.2-1-2. Definitions.

The following definitions apply throughout this article:

(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) “Applicant” means an individual who applies for a certificate of registration as an athlete agent under this article.

(3) “Athlete agent” means an individual who enters into an agency contract with a student athlete or, directly or indirectly, recruits or solicits a student athlete to enter into an agency contract. 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.

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

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

(6) “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. The term includes the value of any part of the student athlete's right of publicity (as defined in IC 32-36-1-7).

(7) "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.

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

(9) "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.

(10) "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.

(11) "Registration" means registration as an athlete agent under this article.

(12) "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.

(13) "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.

§ 25-5.2-2-1. Attorney general as agent for service of process— Issuance of subpoenas.

- (a) By acting as an athlete agent in Indiana, a nonresident individual appoints the attorney general as the individual's agent for service of process in any civil action in Indiana related to the individual's acting as an athlete agent in Indiana.
- (b) The attorney general may issue subpoenas for any material that is relevant to the administration of this article.

§ 25-5.2-2-2. Registration of athlete agents.

- (a) Except as otherwise provided in subsection (b), an individual may not act as an athlete agent in Indiana without holding a certificate of registration under section 4 or 6 of this chapter.
- (b) Before being issued a certificate of registration, an individual may act as an athlete agent in Indiana for all purposes except signing an agency contract, if:
 - (1) a student athlete or another person acting on behalf of the student athlete initiates contact with the individual; and
 - (2) within seven (7) days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in Indiana.
- (c) An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract.

§ 25-5.2-2-3. Application for registration as athlete agent.

- (a) An applicant for registration shall submit an application for registration to the attorney general in a form prescribed by the attorney general. An application filed under this section is a public record under IC 5-14-3. The application must be in the name of an individual and, except as otherwise provided in subsection (b), signed or otherwise authenticated by the applicant under penalty of perjury and contain the following information:
 - (1) The name of the applicant and the address of the applicant's principal place of business.
 - (2) The name of the applicant's business or employer, if applicable.
 - (3) Any business or occupation engaged in by the applicant for the five (5) years immediately preceding the date of submission of the application.
 - (4) A description of the applicant's:
 - (A) formal training as an athlete agent;
 - (B) practical experience as an athlete agent; and
 - (C) educational background relating to the applicant's activities as an athlete agent.
 - (5) The names and addresses of three (3) individuals not related to the applicant who are willing to serve as references.

- (6) The name, sport, and last known team for each individual for whom the applicant acted as an athlete agent during the five (5) years immediately preceding the date of submission of the application.
 - (7) The names and addresses of all persons who are:
 - (A) with respect to the athlete agent's business if it is not a corporation, the partners, members, officers, managers, associates, or profit sharers of the business; and
 - (B) with respect to a corporation employing the athlete agent, the officers, directors, and any shareholder of the corporation having an interest of five percent (5%) or greater.
 - (8) Whether the applicant or any person named in subdivision (7) has been convicted of a crime that, if committed in Indiana, would be a crime involving moral turpitude or a felony, and identify the crime.
 - (9) Whether there has been any administrative or judicial determination that the applicant or any person named in subdivision (7) has made a false, misleading, deceptive, or **fraudulent** representation.
 - (10) A description of any instance in which the conduct of the applicant or any person named in subdivision (7) resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student athlete or educational institution.
 - (11) A description of any sanction, suspension, or disciplinary action taken against the applicant or any person named in subdivision (7) arising out of occupational or professional conduct.
 - (12) Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew the registration or licensure of the applicant or any person named in subdivision (7) as an athlete agent in any state.
- (b) An individual who has submitted an application for and holds a certificate of registration or licensure as an athlete agent in another state may submit a copy of the application and certificate instead of submitting an application in the form prescribed under subsection (a). The attorney general shall accept the application and the certificate from the other state as an application for registration in Indiana if the application to the other state:
- (1) was submitted in the other state within six (6) months immediately preceding the submission of the application in Indiana 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 Indiana; and
- (3) was signed by the applicant under penalty of perjury.

§ 25-5.2-2-4. Issuance of certificate—Justifications for refusal to issue certificate—Renewal of certification.

- (a) Except as otherwise provided in subsection (b), the attorney general shall issue a certificate of registration to an individual who complies with the requirements of section 3(a) of this chapter or whose application has been accepted under section 3(b) of this chapter.
- (b) The attorney general may refuse to issue a certificate of registration if the attorney general determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the attorney general may consider whether any of the following apply to the applicant:
 - (1) The applicant has been convicted of a crime that, if committed in Indiana, would be a crime involving moral turpitude or a felony.
 - (2) The applicant made a materially false, misleading, deceptive, or fraudulent representation in the application or as an athlete agent.
 - (3) The applicant has engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity.
 - (4) The applicant has engaged in conduct prohibited by section 12 of this chapter.
 - (5) The applicant has had a registration or a license as an athlete agent suspended, revoked, or denied or been refused renewal of a registration or a license as an athlete agent in any state.
 - (6) The applicant has engaged in conduct the consequences of which were 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.
 - (7) The applicant has engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty, or integrity.
- (c) In making a determination under subsection (b), the attorney general shall consider the following:
 - (1) How recently the conduct occurred.
 - (2) The nature of the conduct and the context in which it occurred.
 - (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 attorney general. An application filed under this subsection is a public record under IC 5-14-3. The application for renewal must be signed by the applicant under penalty of perjury and must contain current information on all matters required by section 3(a) of this chapter for an original registration.
- (e) An individual who has submitted an application for renewal of a registration or a license in another state, instead of submitting an application for renewal in the form prescribed under subsection (d), may file a copy of the application for renewal and a valid certificate of registration or a valid license from the other state. The attorney general shall accept the application for renewal from the other state as an application for renewal in Indiana if the application to the other state:
 - (1) was submitted in the other state within six (6) months immediately preceding the filing in Indiana and the applicant certifies that 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 Indiana; 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 (2) years.

§ 25-5.2-2-5. Suspension, revocation, or refusal to renew certification—Notice.

- (a) The attorney general may suspend, revoke, or refuse to renew a certificate of registration for conduct that would have justified denial of registration under section 4(b) of this chapter.
- (b) The attorney general may deny, suspend, revoke, or refuse to renew a certificate of registration only after proper notice and an opportunity for a hearing under IC 4-21.5.

§ 25-5.2-2-6. Temporary certificate of registration.

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

§ 25-5.2-2-7. Application fee.

A fee established by the attorney general in accordance with IC 25-1-8-2 must accompany an application for registration or renewal of registration.

§ 25-5.2-2-8. Agency contract.

- (a) An agency contract must be in a record, signed or otherwise authenticated by the parties.
- (b) An agency contract must contain the following:
 - (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.
 - (6) The date of execution.
- (c) An agency contract must contain, in close proximity to the signature of the student athlete, a conspicuous notice in boldface type in capital letters stating:

WARNING TO STUDENT ATHLETE

IF YOU SIGN THIS CONTRACT:

- (1) **YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT ATHLETE IN YOUR SPORT;**
 - (2) **IF YOU HAVE AN ATHLETIC DIRECTOR, BOTH YOU AND YOUR ATHLETE AGENT MUST GIVE TO YOUR ATHLETIC DIRECTOR THE TEN (10) DAY NOTICE REQUIRED BY IC 25-5.2-2-9 AND IC 35-46-4-4 BEFORE EXECUTING THIS CONTRACT; AND**
 - (3) **YOU MAY CANCEL THIS CONTRACT WITHIN FOURTEEN (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.

- (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.

§ 25-5.2-2-9. Notice to athletic director.

- (a) At least ten (10) days before a student athlete enters into an agency contract, the athlete agent shall give in a record the notice required by IC 35-46-4-4 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) At least ten (10) days before entering into an agency contract, the student athlete shall inform the athletic director of the educational institution at which the student athlete is enrolled or intends to enroll that the student athlete intends to enter into an agency contract.

§ 25-5.2-2-10. Right to cancel agency contract.

- (a) A student athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within fourteen (14) days after the contract is signed.
- (b) A student athlete may not waive the right to cancel an agency contract.
- (c) If a student athlete cancels an agency contract, the student athlete is not required to pay 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.

§ 25-5.2-2-11. Record requirements—Inspection by attorney general.

- (a) An athlete agent shall retain the following records for a period of five (5) years:
 - (1) The name and address of each individual represented by the athlete agent.
 - (2) A copy of any agency contract entered into by the athlete agent.
 - (3) A record of any direct costs incurred by the athlete agent in the recruitment or solicitation of a student athlete to enter into an agency contract.

- (b) Records required by subsection (a) to be retained are open to inspection by the attorney general during normal business hours.

§ 25-5.2-2-12. Criminal Penalties.

- (a) An athlete agent who, with the intent to induce a student athlete to enter into an agency contract:
 - (1) gives any materially false or misleading information or makes a materially false promise or representation;
 - (2) furnishes anything of value to a student athlete before the student athlete enters into the agency contract; or
 - (3) furnishes anything of value to any individual other than the student athlete or another registered athlete agent; commits a Class D felony.
- (b) An athlete agent who intentionally:
 - (1) initiates contact with a student athlete unless registered under this article;
 - (2) refuses or fails to retain or permit inspection of the records required to be retained by section 11 of this chapter;
 - (3) fails to register when required by section 2 of this chapter;
 - (4) provides materially false or misleading information in an application for registration or renewal of registration;
 - (5) predates or postdates an agency contract; or
 - (6) fails to notify a student athlete before the student athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student athlete ineligible to participate as a student athlete in that sport; commits a Class D felony.

§ 25-5.2-2-13. Right of action of educational institution.

- (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 article. In an action under this section, the court may award to the prevailing party costs and reasonable attorney's fees.
- (b) Damages of an educational institution under subsection (a) include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student athlete, the educational institution was injured by a violation of this article 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 under 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) Any liability of the athlete agent or the former student athlete under this section is several and not joint.
- (e) This article does not restrict rights, remedies, or defenses of any person under law or equity.

§ 25-5.2-2-14. Civil penalties.

- (a) A person who violates this article is subject to a civil penalty not to exceed twenty-five thousand dollars (\$25,000) for each violation, as determined by the court. All civil penalties recovered under this chapter shall be deposited in the state general fund.
- (b) In addition to the civil penalty imposed under subsection (a), the attorney general may restrict, suspend, or revoke a certificate of registration of an athlete agent for violation of this article.
- (c) The attorney general may institute and conduct an action in the name of the state of Indiana for any of the following:
 - (1) An injunction in any circuit or superior court of Indiana for injunctive relief to restrain a person from continuing any activity that violates this article.
 - (2) The assessment and recovery of the civil penalty provided in subsection (a).
- (d) The attorney general may present any evidence of a crime under section 12 of this chapter to any prosecuting attorney for initiation of criminal proceedings against the offender. The attorney general shall cooperate with the prosecuting attorney in the prosecution of the offense.

§ 25-5.2-2-15. Applicability and construction.

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 the states that enact it.

§ 25-5.2-2-16. Construction with Electronic Signatures in Global and National Commerce Act.

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

IOWA

§ 9A.1. Title.

This chapter shall be known as the “*Registration of Athlete Agents Act*”.

Section History: Recent form 88 Acts, ch 1248, §1

§ 9A.2. Definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Athlete agent*” means a person representing a student athlete for compensation or any person who, directly or indirectly, recruits or solicits a student athlete to enter into an agent contract or professional sports services contract with the person, or who for a fee procures, offers, promises, or attempts to obtain employment for a student athlete with a professional sports team. “*Athlete agent*” does not include an individual licensed to practice as an attorney in this state when the individual is acting as a representative for a student athlete, unless the attorney also represents the student athlete in negotiations for an agent contract.

2. “*Institution of higher education*” means a public or private college or university in this state.

3. “*Student athlete*” means an individual enrolled at an institution of higher education who is eligible to participate in intercollegiate sports contests as a member of a sports team of an institution of higher education, or who is receiving partial or full financial assistance by way of an athletic scholarship and may in the future be eligible to participate in intercollegiate sports contests as a member of a sports team of an institution of higher education.

Section History: Recent form 88 Acts, ch 1248, §2

§ 9A.3. Registration requirements for athlete agents.

1. An athlete agent shall register with, and obtain a certificate of registration from, the secretary of state before contacting, either directly or indirectly, a student athlete concerning the possibility of the athlete agent’s representing the student athlete. The athlete agent may apply

for a certificate of registration by submitting the forms provided for that purpose and must provide all the information required by the secretary of state, including all of the following:

- a.* Name of the applicant and the address of the applicant's principal place of business.
 - b.* Business or occupation engaged in by the applicant for the five years immediately preceding the date of application.
 - c.* The athlete agent's educational background, training, and experience relating to being an athlete agent.
 - d.* Names and addresses of all persons, except bona fide employees on stated salaries, who are financially interested as partners, associates, or profit sharers in the operation of the business of the athlete agent.
 - e.* Record of all felony charges and convictions, and all misdemeanor charges and convictions of the athlete agent.
 - f.* Record of all felony charges and convictions, and misdemeanor charges and convictions of all persons, except bona fide employees, who are financially interested as partners, associates, or profit sharers in the operation of the business of the athlete agent.
 - g.* Record of all sanctions issued to or disciplinary actions taken against the athlete agent or against any student athlete or any institution of higher education in connection with any transaction or occurrence involving the athlete agent.
 - h.* Additional information as deemed appropriate by the secretary of state.
2. In addition to the requirements of subsection 1, an athlete agent who is not a resident of this state must file with the secretary of state an irrevocable consent to service of process on a form prescribed by the secretary. The consent to service shall be signed by the athlete agent, or by an authorized representative of the athlete agent, and notarized. If the athlete agent is a corporation, the consent to service shall be accompanied by a copy of the corporation's authorization to do business in this state and a copy of the resolution of the corporation authorizing the consent to service. The consent to service shall indicate that service upon the secretary of state is sufficient service upon the athlete agent, if the plaintiff forwards by certified mail one copy of the service to the business address of the athlete agent on file at the office of the secretary of state.
3. A certificate of registration issued under this section is valid for one year from the date of issuance. A registered athlete agent may renew

the certificate by filing a renewal application in the form prescribed by the secretary of state, accompanied by any applicable renewal fee.

4. The secretary of state shall:
 - a. Establish a reasonable registration fee sufficient to offset expenses incurred in the administration of this chapter.
 - b. Adopt rules necessary for the implementation and administration of this chapter.

Section History: Recent form 88 Acts, ch 1248, §3

§ 9A.4. Resident agent required.

A person registered under this chapter as an athlete agent who is not a resident of this state, or does not have a principal place of business in this state, shall not engage in any activity as an athlete agent in this state unless that person has entered into an agreement with a person who is a resident of this state or whose principal place of business is in this state, who is licensed pursuant to section 602.10101, and who is registered under this chapter as an athlete agent, to act on behalf of the nonresident athlete agent. The agreement shall provide that the resident athlete agent shall act as attorney in fact, on whom all process in any action involving the nonresident athlete agent may be served, as well as any other duties as negotiated by the nonresident and resident athlete agent. The agreement shall be filed with the secretary of state and shall include the name and address of the resident athlete agent.

Section History: Recent form 88 Acts, ch 1248, §4

§ 9A.5. Denial of certificate of registration.

The secretary of state may deny, suspend, or revoke an athlete agent's certificate of registration, following a hearing where a determination is made that the athlete agent has engaged in any of the following activities:

1. Made false or misleading statements of a material nature in the athlete agent's application for a certificate of registration or renewal of a certificate of registration.
2. Misappropriated funds, or engaged in other specific acts such as embezzlement, theft, or fraud, which in the judgment of the secretary of state would render the athlete agent unfit to serve in a fiduciary capacity.

3. Engaged in other conduct, including, but not limited to, conduct contributing to sanctions or disciplinary action against any student athlete or institution of higher education, whether within this state or not, which in the judgment of the secretary of state relates to the athlete agent's fitness to serve in a fiduciary capacity.
4. Engaged in a material violation of this chapter or a rule adopted pursuant to this chapter, as shown by a preponderance of the evidence. The suspension or revocation of an agent's registration may be reviewed pursuant to chapter 17A.

Section History: Recent form 88 Acts, ch 1248, §5

§ 9A.6. Bond required from athlete agent.

1. An athlete agent shall have on file with the secretary of state before the issuance or renewal of a registration certificate, a surety bond executed by a surety company authorized to do business in this state in the sum of twenty-five thousand dollars, which bond shall be continuous in nature until canceled by the surety. A surety shall provide at least thirty days' notice in writing to the agent and to the secretary of state indicating the surety's intent to cancel the bond and the effective date of the cancellation. The surety bond shall be for the benefit of the citizens of this state and shall be conditioned upon the athlete agent's willingness to comply with this chapter, pay all amounts due to any individual or group of individuals when due, and pay all damages caused to any student athlete or institution of higher education by reason of intentional misstatement, misrepresentation, **fraud**, deceit or any unlawful or negligent acts or omissions by the registered athlete agent or the athlete agent's representative or employee while acting within the scope of employment. This section shall not limit the recovery of damages to the amount of the surety bond.
2. The bond shall be made in a form prescribed by the secretary of state and written by a company authorized by the secretary of state to do business within the state.

Section History: Recent form 88 Acts, ch 1248, §6

§ 9A.7. Agent contract.

1. An agent contract to be entered into by a registered athlete agent and a student athlete who has not previously signed a contract of employment with a professional sports team shall be on a form approved by

the secretary of state. Approval of the form shall not be withheld unless the proposed form is unfair, unjust, or oppressive to the student athlete. If the form of the contract is in compliance with any players association form contract, the contract shall be approved by the secretary of state.

2. The agent contract shall have printed on the face of the contract in bold print the following: **“The athlete agent is registered with the secretary of state. Registration does not imply approval or endorsement by the secretary of state of the specific terms and conditions of this contract or competence of the athlete agent. You have the right to terminate this contract within five calendar days after it is signed. You may jeopardize your standing as a student athlete by entering into this contract under the rules for eligibility established by or adhered to by your institution of higher education.”**
3. A registered athlete agent shall file with the secretary of state a schedule of fees chargeable and collectible from a student athlete who has not previously signed a contract of employment with a professional sports team and shall file a description of the various professional services to be rendered in return for each fee. The athlete agent may impose charges only in accordance with the fee schedule. Changes in the fee schedule may be made from time to time, except that a change shall not become effective until the seventh day after the date the change is filed with the secretary of state.

Section History: Recent form 88 Acts, ch 1248, §7

§ 9A.8. Prohibited activities.

A person shall not do any of the following:

1. Act or offer to act as an athlete agent unless registered pursuant to this chapter.
2. Engage in conduct which violates, or causes or contributes to causing a student or institution of higher education to violate, any rule or regulation adopted by the national collegiate athletic association governing student athletes and their relationship with athlete agents and institutions of higher education.
3. Except as provided in subsection 5, enter into a written or oral agreement by which the athlete agent will represent a student athlete, or give anything of value to a student athlete, until after completion of the student athlete’s last intercollegiate athletic contest including any postseason contest.

4. Enter into an agreement before the student athlete's last intercollegiate contest that purports to take effect at a time after that contest is completed.
5. Enter into an agreement where the athlete agent gives, offers, or promises anything of value to an employee or student of an institution of higher education in return for the referral of a student athlete by the employee or student.
6. Interfere with, impede, or obstruct the administration and enforcement of this chapter.

Section History: Recent form 8 Acts, ch 1248, §8

§ 9A.9. On-campus athlete agent interviews.

If an institution of higher education located in this state elects to permit athlete agent interviews on its campus during a student athlete's final year as a student athlete, a registered athlete agent may interview the student athlete to discuss the registered athlete agent's representation of the student athlete in the marketing of the student athlete's athletic ability and reputation. The registered athlete agent shall strictly adhere to the conditions imposed by each institution with regard to the time, place, manner, and duration of the interviews.

Section History: Recent form 88 Acts, ch 1248, §9

§ 9A.10. Contract void.

An agent contract negotiated by an athlete agent who has failed to comply with the provisions of this chapter is void. If the contract is void pursuant to this section, the athlete agent does not have a right of repayment of anything of value received by the student athlete as an inducement to enter into an agent contract or received by a student athlete before completion of the student athlete's last intercollegiate contest, and the athlete agent shall refund any consideration paid to the athlete agent by the student athlete or on the student athlete's behalf.

Section History: Recent form 88 Acts, ch 1248, §10

§ 9A.11. Penalties—enforcement.

1. The attorney general may institute a legal proceeding against an athlete agent on behalf of the state, and shall institute legal proceedings at the request of the secretary of state, to enforce this chapter.

2. A person who knowingly and willfully violates a provision of this chapter is subject to a civil penalty in an amount not to exceed ten thousand dollars.
3. A person who violates a provision of section 9A.8 commits a serious misdemeanor.

Section History: Recent form 88 Acts, ch 1248, § 11; 89 Acts, ch 83, § 2

§ 9A.12. Costs.

A student athlete and an institution of higher education are entitled to recover reasonable attorney's fees and court costs against an athlete agent found to be in violation of this chapter.

Section History: Recent form 88 Acts, ch 1248, §12

KANSAS

Kan. Stat. Ann. § 44-1516 to § 44-1536 (Supp. 3B 2005)

§ 44-1516. Short title.

This act shall be known and may be cited as the uniform athlete agents act.

§ 44-1517. Definitions.

As used in this act:

(a) "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;

(b) "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 or grandparent of the student-athlete or an individual acting solely on behalf of a professional sports team or professional sports organization;

(c) "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;

(d) "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;

(e) "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;

(f) "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;

(g) "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;

(h) "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;

(i) "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;

(j) "registration" means registration as an athlete agent pursuant to this act;

(k) "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; and

(l) "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.

§ 44-1518. Service of process; subpoenas.

- (a) By acting as an athlete agent in this state, a nonresident individual appoints the secretary of state as the individual's agent for service of process in any civil action in this state related to the individual's acting as an athlete agent in this state. Service on the secretary of state of any process, notice or demand against the athlete agent shall be made by delivering to the secretary of state by personal service or by certified mail, the original and two copies of the process and two copies of the petition, notice or demand, or the clerk of the court may send the original process and two copies of both the process and the petition, notice or demand directly to the secretary of state by certified mail. In the event that any such process, notice or demand is served on the secretary of state, the secretary shall immediately cause a copy of such process, notice or demand to be forwarded by certified mail, addressed to the athlete agent at such athlete agent's address as it appears in the records of the secretary of state. The secretary of state shall keep a

record of all such processes, notices and demands served upon the secretary under this subsection, and shall record in the record the time of the service and the action of the secretary with reference to it. A fee of \$40 shall be paid to the secretary of state by the party requesting the service of process, to cover the cost of such service of process, except the secretary of state may waive the fee for state agencies. That fee shall not be included within or paid from any deposit as security for any costs or docket fee required by K.S.A. 60-2001 or 61-4001, and amendments thereto.

- (b) The secretary of state may issue subpoenas for any material that is relevant to the administration of this act. Any such information or material received by the secretary shall be treated as confidential by the secretary and shall not be open to public inspection except by court order.

§ 44-1519. Athlete agents; registration required; void contracts.

- (a) Except as otherwise provided in subsection (b), an individual may not act as an athlete agent in this state without holding a certificate of registration as provided under K.S.A. 2005 Supp. 44-1521 or 44-1523, and amendments thereto.
- (b) Before being issued a certificate of registration, an individual may act as an athlete agent in this state for all purposes except signing an agency contract, if:
 - (1) A student-athlete or another person acting on behalf of the student-athlete initiates communication with the individual; and
 - (2) within seven days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in this state.
- (c) An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract.

§ 44-1520. Registration as athlete agent; form; requirements.

- (a) An applicant for registration shall submit an application for registration to the secretary of state in a form prescribed by the secretary of state. The application must be in the name of an individual 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 of the applicant and the address of the applicant's principal place of business;
- (2) the name of the applicant's business or employer, if applicable;
- (3) any business or occupation engaged in by the applicant for the five years next preceding the date of submission of the application;
- (4) a description of the applicant's:
 - (A) Formal training as an athlete agent;
 - (B) practical experience as an athlete agent; and
 - (C) educational background relating to the applicant's activities as an athlete agent;
- (5) the names and addresses of three individuals not related to the applicant who are willing to serve as references;
- (6) the name, sport and last known team for each individual for whom the applicant acted as an athlete agent during the five years next preceding the date of submission of the application;
- (7) the names and addresses of all persons who are:
 - (A) With respect to the athlete agent's business if it is not a corporation, the partners, members, officers, managers, associates or profit-sharers of the business; and
 - (B) with respect to a corporation employing the athlete agent, the officers, directors and any shareholder of the corporation having an interest of 5% or greater;
- (8) whether the applicant or any person named pursuant to subsection (a)(7) has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony, and identify the crime;
- (9) whether there has been any administrative or judicial determination that the applicant or any person named pursuant to subsection (a)(7) has made a false, misleading, deceptive or **fraudulent** representation;
- (10) any instance in which the conduct of the applicant or any person named pursuant to subsection (a)(7) resulted in the imposition of a sanction, suspension or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or educational institution;
- (11) any sanction, suspension or disciplinary action taken against the applicant or any person named pursuant to subsection (a)(7) arising out of occupational or professional conduct; and

- (12) whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any person named pursuant to subsection (a)(7) as an athlete agent in any state.
- (b) An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another state, may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to subsection (a). The secretary of state shall accept the application and the certificate from the other state as an application for registration in this state if the application to the other state:
- (1) Was submitted in the other state within six months next preceding the submission of the application in this state and the applicant certifies that the information contained in the application is current;
 - (2) contains information substantially similar to or more comprehensive than that required in an application submitted in this state; and
 - (3) was signed by the applicant under penalty of perjury.

§ 44-1521. Certificate of registration; issuance or denial; renewal.

- (a) Except as otherwise provided in subsection (b), the secretary of state shall issue a certificate of registration to an individual who complies with subsection (a) of K.S.A. 2005 Supp. 44-1520, and amendments thereto, or whose application has been accepted under subsection (b) of K.S.A. 2005 Supp. 44-1520, and amendments thereto.
- (b) The secretary of state may refuse to issue a certificate of registration if the secretary of state determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the secretary of state may consider whether the applicant has:
- (1) Been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony;
 - (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 K.S.A. 2005 Supp. 44-1529, and amendments thereto;

- (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 secretary of state 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 secretary of state. 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) 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 secretary of state shall accept the application for renewal from the other state as an application for renewal in this state if the application to the other state:
- (1) Was submitted in the other state within six months next preceding the filing in this state and the applicant certifies the information contained in the application for renewal is current;
 - (2) contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this state; and
 - (3) was signed by the applicant under penalty of perjury.
- (f) A certificate of registration or a renewal of a registration is valid for two years.

§ 44-1522. Suspension, revocation or refusal to renew registration.

- (a) The secretary of state may suspend, revoke or refuse to renew a registration for conduct that would have justified denial of registration under subsection (b) of K.S.A. 2005 Supp. 44-1521, and amendments thereto.
- (b) The secretary of state may deny, suspend, revoke or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing pursuant to the Kansas administrative procedures act.

§ 44-1523. Temporary registration.

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

§ 44-1524. Registration and renewal fees.

An application for registration or renewal of registration must be accompanied by a fee in the following amount:

- (1) \$500 for an initial application for registration;
- (2) \$500 for an application for registration based upon a certificate of registration or licensure issued by another state;
- (3) \$500 for an application for renewal of registration; or
- (4) \$500 for an application for renewal of registration based upon an application for renewal of registration or licensure submitted in another state.

§ 44-1525. Required form of contract.

- (a) An agency contract must be in a record, signed or otherwise authenticated by the parties.
- (b) An agency contract must state or 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 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, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND
 - (3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.
- (d) An agency contract that does not conform to this section is voidable by the student-athlete. If a student-athlete voids an agency contract, the student-athlete is not required to pay 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.
- (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.

§ 44-1526. Notice to educational institution.

- (a) Within 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 the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.

- (b) Within 72 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 the student-athlete has entered into an agency contract.

§ 44-1527. Student-athlete's right to cancel.

- (a) A student-athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within 14 days after the contract is signed.
- (b) A student-athlete may not waive the right to cancel an agency contract.
- (c) If a student-athlete cancels an agency contract, the student-athlete is not required to pay 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.

§ 44-1528. Required records.

- (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) any agency contract entered into by the athlete agent; and
 - (3) any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract.
- (b) Records required by subsection (a) to be retained are open to inspection by the secretary of state during normal business hours.

§ 44-1529. Criminal conduct by an athlete agent.

- (a) Criminal conduct by an athlete agent is when:
 - (1) An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, does any of the following:
 - (A) Gives any materially false or misleading information or makes a materially false promise or representation;
 - (B) furnishes anything of value to a student-athlete before the student-athlete enters into the agency contract; or

- (C) furnishes anything of value to any individual other than the student-athlete or another registered athlete agent; or
- (2) an athlete agent intentionally:
 - (A) Initiates contact with a student-athlete unless registered under this act;
 - (B) refuses or fails to retain or permit inspection of the records required to be retained by K.S.A. 2005 Supp. 44-1528, and amendments thereto;
 - (C) fails to register when required by K.S.A. 2005 Supp. 44-1519, and amendments thereto;
 - (D) provides materially false or misleading information in an application for registration or renewal of registration;
 - (E) predates or postdates an agency contract; or
 - (F) fails to notify a student-athlete before the student-athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate as a student-athlete in that sport.
- (b) Criminal conduct by an athlete agent is a class A nonperson misdemeanor.

§ 44-1530. Civil remedies.

- (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 act.
- (b) Damages of an educational institution under subsection (a) include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student-athlete, the educational institution was injured by a violation of this act 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 under 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) Any liability of the athlete agent or the former student-athlete under this section shall be subject to K.S.A. 60-258a, and amendments thereto.
- (e) This act does not restrict rights, remedies or defenses of any person under law or equity.

§ 44-1531. Administrative penalty.

The secretary of state may assess a civil penalty against an athlete agent not to exceed \$25,000 for a violation of this act. A civil penalty owed under this section may be recovered in a civil action brought by the attorney general at the request of the secretary.

§ 44-1532. Referral of violation to attorney general.

If the secretary of state determines that a violation of K.S.A. 2005 Supp. 44-1529, and amendments thereto has occurred, the secretary shall refer the case to the attorney general for prosecution. On the determination of the secretary that a violation of this act is occurring or is threatened, the secretary or the attorney general may bring an action in district court in Shawnee county to enjoin the violation or threatened violation.

§ 44-1533. Athlete agent registration fee fund; credits; use.

There is hereby created in the state treasury the athlete agent registration fee fund which shall be administered by the secretary of state. All moneys credited to the athlete agent registration fee fund shall be used for the expenses incurred for the performance of the duties and functions of the secretary of state under the uniform athlete agents act. All expenditures from the athlete agent registration fee fund shall be made in accordance with the provisions of appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of state or by a person or persons designated by the secretary. Fees, civil penalties and other moneys received under this act by the secretary of state shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the athlete agent registration fee fund.

§ 44-1534. Uniformity of application and construction.

In applying and construing this act, consideration shall be given to the need to promote uniformity of the law with respect to this act's subject matter among states that enact it.

§ 44-1535. Rules and regulations.

The secretary of state is hereby authorized to promulgate rules and regulations to carry out the provisions of this act.

§ 44-1536. Severability.

If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

KENTUCKY

Ky. Rev. Stat. Ann. § 164.6901 to § 164.6935 (West 2005)

§ 164.6901. Short title

KRS 164.6901 to 164.6935 may be cited as the Uniform Athlete Agents Act.

§ 164.6903 Definitions for KRS 164.6901 to 164.6935

As used in KRS 164.6901 to 164.6935, unless the context requires otherwise:

(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;

(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 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) “Division” means the Division of Occupations and Professions in the Finance and Administration Cabinet;

(6) “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;

(7) "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;

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

(9) "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;

(10) "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;

(11) "Registration" means registration as an athlete agent pursuant to KRS 164.6901 to 164.6935;

(12) "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; and

(13) "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.

§ 164.6905 Role of Division of Occupations and Professions

- (1) By acting as an athlete agent in this state, a nonresident individual appoints the Division of Occupations and Professions as the individual's agent for service of process in any civil action in this state related to the individual's acting as an athlete agent in this state.
- (2) The division may issue subpoenas for any material that is relevant to the administration of KRS 164.6901 to 164.6935.
- (3) The division may promulgate administrative regulations in accordance with KRS Chapter 13A that are necessary to carry out the provisions of KRS 164.6901 to 164.6935.

§ 164.6907 Certificate of registration required

- (1) Except as otherwise provided in subsection (2) of this section, an individual may not act as an athlete agent in this state without holding a certificate of registration under KRS 164.6911 or 164.6913(3).
- (2) Before being issued a certificate of registration, an individual may act as an athlete agent in this state for all purposes except signing an agency contract, if:
 - (a) A student-athlete or another person acting on behalf of the student-athlete initiates communication with the individual; and
 - (b) Within seven (7) days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in this state.
- (3) An agency contract resulting from conduct in violation of this section is void, and the athlete agent shall return any consideration received under contract.

§ 164.6909 Contents of application; certificate from other state

- (1) An applicant for registration shall submit an application for registration to the division in a form prescribed by the division. An application filed under this section is a public record. The application must be in the name of an individual, and except as otherwise provided in subsection (2) of this section, signed or otherwise authenticated by the applicant under penalty of perjury and state or contain:
 - (a) The name of the applicant and the address of the applicant's principal place of business;
 - (b) The name of the applicant's business or employer, if applicable;
 - (c) Any business or occupation engaged in by the applicant for the five (5) years next preceding the date of submission of this application;
 - (d) A description of the applicant's:
 1. Formal training as an athlete;
 2. Practical experience as an athlete agent; and
 3. Educational background relating to the applicant's activities as an athlete agent;
 - (e) The names and addresses of three (3) individuals not related to the applicant who are willing to serve as references;

- (f) The name, sport, and last known team for each individual for whom the applicant acted as an athlete agent during the five (5) years next preceding the date of submission of the application;
 - (g) The names and addresses of all persons who are:
 1. With respect to the athlete agent's business if it is not a corporation, the partners, members, officers, managers, associates, or profit-sharers of the business; and
 2. With respect to a corporation employing the athlete agent, the officers, directors, and any shareholder of the corporation having an interest of five percent (5%) or greater;
 - (h) Whether the applicant or any person named pursuant to paragraph (g) of this subsection has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony, and identify the crime;
 - (i) Whether there has been any administrative or judicial determination that the applicant or any person named pursuant to paragraph (g) of this subsection has made a false, misleading, deceptive, or **fraudulent** representation;
 - (j) Any instance in which the conduct of the applicant or any person named pursuant to paragraph (g) of this subsection resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or educational institution;
 - (k) Any sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to paragraph (g) of this subsection arising out of occupational or professional conduct; and
 - (l) Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any person named pursuant to paragraph (g) of this subsection as an athlete agent in any state.
- (2) An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another state, may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to subsection (1) of this section. The division shall accept the application and the certificate from the other state as an application for registration in this state if the application to the other state:
- (a) Was submitted in the other state within six (6) months next preceding the submission of the application in this state and the

applicant certifies that the information contained in the application is current;

- (b) Contains information substantially similar to or more comprehensive than that required in an application submitted in this state; and
- (c) Was signed by the applicant under penalty of perjury.

§ 164.6911 Division may refuse to issue certificate; renewal of registration

- (1) Except as otherwise provided in subsection (2) of this section, the division shall issue a certificate of registration to an individual who complies with KRS 164.6909(1) or whose application has been accepted under KRS 164.6909(2).
- (2) The division may refuse to issue a certificate of registration if the division determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the division may consider whether the applicant has:
 - (a) Been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony;
 - (b) Made a materially false, misleading, deceptive, or **fraudulent** representation in the application or as an athlete agent;
 - (c) Engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;
 - (d) Engaged in conduct prohibited by KRS 164.6925;
 - (e) 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;
 - (f) 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
 - (g) Engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty, or integrity.
- (3) In making a determination under subsection (2) of this section, the division shall consider:
 - (a) How recently the conduct occurred;
 - (b) The nature of the conduct and the context in which it occurred; and
 - (c) Any other relevant conduct of the applicant.

- (4) An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the division. An application filed under 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.
- (5) 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 (4) of this section, may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. The division 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:
 - (a) Was submitted in the other state within six (6) months next preceding the filing in this state and the applicant certifies the information contained in the application for renewal is current;
 - (b) Contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this state; and
 - (c) Was signed by the applicant under penalty of perjury.
- (6) A certificate of registration or a renewal of registration is valid for one (1) year.

§ 164.6913 Suspension revocation, or nonrenewal of certificate; temporary certificate

- (1) The division may suspend, revoke, or refuse to renew a registration for conduct that would have justified denial of registration under KRS 164.6911(2).
- (2) The division may deny, suspend, revoke, or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing in accordance with KRS Chapter 13B.
- (3) The division may issue a temporary certificate of registration while an application for registration or renewal of registration is pending.

§ 164.6915 Fees

An application for registration or renewal of registration must be accompanied by a fee in the following amount:

- (1) An initial application for registration fee determined by the division, not to exceed three hundred dollars (\$300);
- (2) An annual renewal fee determined by the division, not to exceed three hundred dollars (\$300); or
- (3) An application for registration fee based upon certification of registration or licensure issued by another state determined by the division, not to exceed two hundred fifty dollars (\$250).

§ 164.6917 Requirements for agency contract

- (1) An agency contract must be in a record, signed or otherwise authenticated by the parties.
- (2) An agency contract must state or contain:
 - (a) 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 may receive from any other source for entering into the contract or for providing the services;
 - (b) 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;
 - (c) A description of any expenses that the student-athlete agrees to reimburse;
 - (d) A description of the services to be provided to the student-athlete;
 - (e) The duration of the contract; and
 - (f) The date of execution.
- (3) 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; AND**
- (3) **YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.**

- (4) 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.
- (5) The athlete agent shall give a record of the signed or otherwise authenticated agency contract to the student-athlete at the time of execution.

§ 164.6919 Notice to athletic director

- (1) Within seventy-two (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 the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.
- (2) Within seventy-two (72) 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.

§ 164.6921 Cancellation of agency contract by student-athlete

- (1) A student-athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within fourteen (14) days after the contract is signed.
- (2) A student-athlete may not waive the right to cancel an agency contract.
- (3) If a student-athlete cancels 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.

§ 164.6923 Records to be retained by athlete agent

- (1) An athlete agent shall retain the following records for a period of five (5) years:

- (a) The name and address of each individual represented by the athlete agent;
 - (b) Any agency contract entered into by the athlete agent; and
 - (c) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract.
- (2) Records required to be retained in subsection (1) of this section are open to inspection by the division during normal business hours.

§ 164.6925 Prohibited acts

- (1) An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, may not:
- (a) Give any materially false or misleading information or make a materially false promise or representation;
 - (b) Furnish anything of value to a student-athlete before the student-athlete enters into the agency contract; or
 - (c) Furnish anything of value to any individual other than the student-athlete or another registered athlete agent.
- (2) An athlete agent shall not intentionally:
- (a) Initiate contact with a student-athlete unless registered under KRS 164.6901 to 164.6935;
 - (b) Refuse or fail to retain or permit inspection of the records required to be retained by KRS 164.6923;
 - (c) Fail to register when required by KRS 164.6907;
 - (d) Provide materially false or misleading information in an application for registration or renewal of registration;
 - (e) Predate or postdate an agency contract; or
 - (f) Fail to notify a student-athlete before the student-athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate as a student-athlete in that sport.

§ 164.6927 Penalties

- (1) Any person who engages in the business of an athlete agent or represents himself or herself as an athlete agent without being registered in accordance with KRS 164.6901 to 164.6935 shall be guilty of a Class A misdemeanor.

- (2) Any registered athlete agent who knowingly and willfully commits a prohibited act contained in KRS 164.6925 shall be guilty of a Class D felony.
- (3) Any registered athlete agent who knowingly and willfully violates any provision of KRS 164.6917 shall be guilty of a Class D felony.
- (4) A student athlete who knowingly and willfully violates any provision of KRS 164.6919 shall be guilty of a Class A misdemeanor.
- (5) Any registered athlete agent or athlete who fails to make restitution to a college or university that prevails in a suit brought under KRS 164.6929 shall be guilty of a Class D felony.

§ 164.6929 Right of action of educational institution for damages caused by violation of KRS 164.6901 to 164.6935

- (1) An educational institution has a right of action against an athlete agent or a former student-athlete for damages caused by a violation of KRS 164.6901 to 164.6935. In an action under this section, the court may award to the prevailing party costs and reasonable attorney's fees.
- (2) Damages of an educational institution under subsection (1) of this section include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student-athlete, the educational institution was injured by a violation of KRS 164.6901 to 164.6935 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.
- (3) A right of action under 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.
- (4) Any liability of the athlete agent or the former student-athlete under this section is several and not joint.
- (5) The division may assess a civil penalty against an athlete agent not to exceed twenty-five thousand dollars (\$25,000) for a violation of KRS 164.6901 to 164.6935.
- (6) KRS 164.6901 to 164.6935 does not restrict rights, remedies, or defenses of any person under law or equity.

§ 164.6931 Construction of KRS 164.6901 to 164.6935

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.

§ 164.6933 Effect of federal act

The provisions of KRS 164.6901 to 164.6935 governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures, conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, 15 U.S.C. sec. 7001 et seq., and supersede, modify, and limit the Electronic Signatures in Global and National Commerce Act.

§ 164.6935 Severability

If any provision of KRS 164.6901 to 164.6935 or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of KRS 164.6901 to 164.6935 which can be given effect without the invalid provision or application, and to this end the provisions of KRS 164.6901 to 164.6935 are severable.

LOUISIANA

La. Rev. Stat. Ann. § 420 to § 433 (2003 & Supp. 2005)

Chapter 7. Athletes and Athlete Agents

§ 420. Declaration of purpose

- A. The legislature hereby recognizes that it is a special privilege afforded to athlete agents to contact student athletes to secure their athletic abilities for professional sports teams. The legislature also feels that with that privilege should come certain duties, obligations, and responsibilities. The legislature hereby enacts the laws of this Chapter to regulate those contacts and to protect young, inexperienced student athletes in this state from unscrupulous athlete agents and other persons who would seek to exploit such athletes, or their institutions or schools, when entering or seeking to enter into an agent contract or professional sport services contract or when obtaining or seeking to obtain employment with a professional sports team.
- B. It is the further purpose of the legislature in enacting this Chapter to protect student athletes from contacts with and accepting things of value from athlete agents and other persons in a manner so as to cause such athletes to unintentionally lose their eligibility to compete in interscholastic or intercollegiate athletics.
- C. It is the further purpose of the legislature to protect the educational institutions and schools of this state from unscrupulous athlete agents, athletes, and other persons who would cause such institutions to suffer various sanctions as a result of unlawful activities in connection with athletes participating in sports at such institutions and schools.
- D. Another purpose of the legislature in enacting this Chapter is to recognize that the relationship between a student athlete and their institution or school is one of contract.
- E. Accordingly, the legislature, in enacting the provisions of this Chapter, hereby creates causes of action, rights, and remedies for such institutions and schools to recover for damages caused to the institution or school by any person acting in violation of this Chapter. Such causes

of action specifically include but are not limited to the cause of action known as tortious interference with an athlete contract.

§ 421. Definitions

A. As used in this Chapter:

- (1) “Agent contract” means any contract or agreement, whether written or oral, under which an athlete authorizes an athlete agent to negotiate or solicit on behalf of the athlete for the employment of the athlete by one or more professional sports teams.
- (2) “Anything of value” means any thing of value. It shall be given the broadest possible construction, including any conceivable thing of the slightest value, movable or immovable, corporeal or incorporeal, public or private, and specifically including transportation, telephone and telegraph services, or other services available for hire. It shall be construed in the popular sense of the phrase and not necessarily as synonymous with the traditional legal term “property”. It shall specifically include but not be limited to a donation, sale, lease, loan, suretyship, and mortgage.
- (3) (a) “Athlete” means a student who resides in this state, or a student who does not reside in this state but has informed in writing an institution of higher education in this state of the student’s intent to participate in that school’s intercollegiate sports contests, and who is characterized by either of the following:
 - (i) Is eligible to participate in junior high, high school, or intercollegiate sports contests as a member of a sports team of a junior high, high school, or institution of higher education which is located in this state and which is a member of a federation or association.
 - (ii) Has participated as a member of such a sports team at a junior high, high school, or institution of higher education.
- (b) “Athlete” does not mean a student who has completed his last intercollegiate or interscholastic sports contest, including postseason contests, or who has notified in writing the athletic director or head coach of the school or institution at which he is participating that he is renouncing his eligibility to participate on such sports team.

- (4) "Athlete agent" means any person who recruits or solicits an athlete to enter into an agent contract or professional sport services contract with any person, or who offers anything of value to any person to induce an athlete to enter into an agreement by which any person will represent the athlete, or who for anything of value procures, offers, promises, or attempts to obtain employment for an athlete with a professional sports team.
- (5) "Athlete contract" means any contract or agreement executed by a student athlete with an educational institution or school concerning the student's participation in that institution's intercollegiate sport contests or interscholastic athletic activities.
- (6) "Certified by the appropriate players association" means that an athlete agent has received approval of his application for certification from the appropriate players association of the professional league for which he is soliciting athletes, has fulfilled all other requirements of the players association, and is in good standing before the players association.
- (7) "Contact" means any communication by an athlete agent or by any intermediary with an athlete, or with any third person for the purpose of having that third person communicate with the athlete about the possibility of or formation of any business, financial, or other contractual relationship or agreement, including an agent contract, a professional services contract, or a professional sports services contract.
- (8) "Division" means the public protection division of the Department of Justice.
- (9) "Federation or association" means any state or national association for the promotion and regulation of interscholastic or intercollegiate sports governing athletes and their relationships with athlete agents.
- (10) "Institution" means any institution of higher education in this state having an athlete contract with an athlete.
- (11) "Intermediaries" or "third person" means any persons other than the athlete agent or the athlete.
- (12) "Person" means an individual, company, corporation, association, partnership, or other legal entity.
- (13) "Registered athlete agent" means an athlete agent registered with the division under the provisions of this Chapter.

- (14) "School" means any secondary school in this state, including high schools and junior high schools, that has an athlete contract with an athlete.
- B. For purposes of this Chapter, the execution by an athlete of a personal service contract with the owner or prospective owner of a professional sports team for the purpose of future athletic services is equivalent to employment with a professional sports team.

§ 422. Registration of agents

- A. (1) An athlete agent shall register with the division as provided in this Chapter before the athlete agent may contact an athlete.
- (2) An athlete agent must first be certified by the appropriate professional players association or associations in the professional league or leagues for which he is soliciting athletes in order to be registered as an athlete agent in this state.
- (3) For the purposes of this Chapter, any document required to be filed with the division shall be deemed filed when it is received either physically or electronically in any office designated by the division for the receipt of such documents.
- B. (1) A written application for registration or renewal shall be signed by the applicant, notarized, made to the division on a form prescribed by the division, and shall state:
- (a) The name of the applicant and the address of the applicant's principal place of business.
 - (b) The business or occupation engaged in by the applicant for the five years immediately preceding the date of application.
 - (c) The names and addresses of three references, including any persons, if any, with whom the applicant has dealt in his capacity as an athlete agent or in the practice of his business or profession, not to exceed three such persons.
 - (d) The names and addresses of all persons, except bona fide employees on stated salaries, who are financially interested as partners, associates, or profit sharers in the operation of the business of the athlete agent.
 - (e) The names and addresses of all athletes for whom the athlete agent is providing professional services for compensation at the time of the renewal.
 - (f) The name and address of the applicant's agent for service of process, including an affidavit accepting such appointment

from the applicant's agent for service of process, if not previously filed and on record with the secretary of state.

- (2) If the applicant is a corporation, the information required by this Subsection shall be provided by each officer of that corporation. If the applicant is an association or partnership, such information shall be provided by each associate or partner.
- C. The registration is valid from July first of one year through June thirtieth of the following year. An initial registration is valid until the first June thirtieth following the date of the registration. Renewal of the registration may be made by the filing of an application for renewal.
- D. To produce sufficient revenue to offset the expenses incurred by the division in administering this Chapter, an annual registration fee of one hundred dollars shall be paid.

§ 422.1. Denial of registration; refusal to renew; revocation or suspension; notification; hearing

- A. The division may, pursuant to an adjudicatory hearing, refuse to issue or renew a registration upon proof that the applicant has engaged in any one or more of the following activities:
 - (1) Has made false or misleading statements of a material nature in his application for registration or renewal.
 - (2) Has ever been convicted of **fraud**, embezzlement, a felonious theft, or any other crime involving a misappropriation of funds, which could render him unfit in a fiduciary capacity.
 - (3) Has engaged in conduct which violates or causes an athlete to violate any rule or regulation promulgated by any federation or association.
 - (4) Has been denied certification by any professional players association.
 - (5) Has engaged in conduct which has caused an institution or school to be investigated by or sanctioned by any federation or association.
- B. The division may, pursuant to an adjudicatory hearing, suspend or revoke a registration upon proof that an athlete agent has engaged in any of the activities enumerated in Subsection A of this Section or for a violation of this Chapter or any rule adopted pursuant to this Chapter.
- C. Prior to a denial, refusal to renew, suspension, or revocation of registration, the division shall notify the applicant or athlete agent in writing

by certified mail of the reasons for denial, refusal to renew, suspension, or revocation and of the date of the hearing. All adjudicatory hearings shall be held in accordance with the Administrative Procedure Act.

§ 423. Agent's contract; schedule of fees; maximum fee; notification; penalty

- A. Any agent contract to be used by a registered athlete agent with an athlete shall be filed with the division.
- B. (1) The following provision shall be printed on a separate document, which shall be attached to the agent contract and signed by the athlete and shall be considered an addendum to the contract, in at least ten-point type that is bold-faced, capitalized, underlined, or otherwise made to be conspicuous:

“Notice to Client

- (a) This athlete agent is registered with the public protection division of the Department of Justice. Registration does not imply approval or endorsement by the division of the specific terms and conditions of this contract or the competence of the athlete agent.
- (b) When you sign this contract, you will likely immediately lose your eligibility to compete in intercollegiate athletics. Your agent (who is an athlete agent) must give written notice that you have entered into this contract to the athletic director and the head coach of your institution or school within seventy-two hours after entering into this contract or prior to participating in intercollegiate athletics, whichever comes first. Failure by the athlete agent to provide this notice is a criminal offense.
- (c) Do not sign this contract until you have read it or if it contains blank spaces.
- (d) If you decide that you do not wish to purchase the services of the athlete agent, you may rescind this contract by notifying the athlete agent in writing of your desire to rescind the contract not later than the sixteenth day after the date on which this contract is filed with the division. However, even if you rescind this contract, the federation or association of which your institution of higher education or school is a member may not restore your eligibility to participate in intercollegiate athletics.
- (e) IF YOU BELIEVE YOU HAVE BEEN UNLAWFULLY INDUCED INTO SIGNING THIS CONTRACT, YOU CAN CONTACT YOUR ATHLETIC DIRECTOR OR HEAD COACH WHO CAN ASSIST YOU TO HAVE THIS CONTRACT DECLARED VOID AND UNENFORCEABLE.”

- (2) Subparagraph (1)(e) of this Subsection shall be included with all letters capitalized and in a bold-faced type in a font the same size or larger than surrounding text.
- C. A written contract between an athlete and an athlete agent must state the fees and percentages to be paid by the athlete to the agent.
 - D. A registered athlete agent shall file with the division a schedule of fees that the agent may charge to and collect from an athlete and shall file a description of the various professional services to be rendered in return for each fee. The athlete agent may impose charges only in accordance with the fee schedule. Changes in the fee schedule may be made from time to time, but a change shall not become effective until the seventh day after the date the change is filed with the division.
 - E. If a multiyear professional sport services contract is negotiated by a registered athlete agent for an athlete, the athlete agent shall not collect in any twelve-month period for the services of the agent in negotiating the contract, a fee that exceeds the amount the athlete will receive under the contract in that twelve-month period.
 - F.
 - (1) A registered athlete agent shall file with the division a copy of an agent contract made with an athlete who has never before signed a contract of employment with a professional sports team.
 - (2)
 - (a) If the athlete is a full-time student at an institution of higher education located in this state, the athlete agent and the athlete shall provide written notice of the contract to and shall file the contract with the athletic director or the president of the institution. The athlete agent and the athlete must give notice before the contracting athlete practices or participates in any intercollegiate athletic event or within seventy-two hours after entering into said contract, whichever comes first.
 - (b) Failure of the athlete agent to provide this notification, which is declared a misdemeanor, shall be punishable by a fine of not more than ten thousand dollars, or imprisonment for not more than one year, or both.
 - (3) An agent contract is not effective until the sixteenth day after the date of execution of the agent contract. The athlete has the right to rescind the agent contract any time prior to the sixteenth day after the date of execution. In the event of rescission by the athlete pursuant to this Section, the agent contract shall be void for all purposes as if never executed.

- G. (1) A postdated agent contract is void and unenforceable.
- (2) An athlete agent shall not enter into an agent contract that purports to or takes effect at a future time after the athlete no longer has remaining eligibility to participate in intercollegiate athletics. Such contract is void and unenforceable.
- (3) An agent contract between an athlete and a person not registered under this Chapter is void and unenforceable.
- (4) Any contract executed by a student athlete with an athlete agent who has failed to comply with the notification and disclosure requirements of R.S. 4:423(B) and 424(C) and (D) is void and unenforceable.
- H. In the event the athlete agent fails to make notification of the contract to the athletic director and to the head coach of the institution or school, as indicated by Subparagraph (B)(1)(b) of this Section, the rescission period shall not begin until such notice is made.
- I. In the event the athlete agent provides the athlete consideration or anything of value prior to the execution of the agent contract, the agent contract is void and unenforceable.

§ 424. Prohibited activities; duties, obligations, and responsibilities

- A. An athlete agent shall not:
 - (1) Sell, transfer, or give away any interest in or the right to participate in the profits of the athlete agent without the prior written disclosure to the division and the written consent of the athlete.
 - (2) Publish or cause to be published any false, **fraudulent**, or misleading information, representation, notice, or advertisement.
 - (3) Advertise by means of cards, circulars, or signs, or in newspapers and other publications, or use letterheads, receipts, or blanks unless the advertisement, letterhead, receipt, or blank is printed and contains the registered name and address of the athlete agent.
 - (4) Intentionally give any false information or intentionally make any false promises or representations to any athlete or the athlete's parents, legal guardians, or other advisors or fail to disclose that he is employed by, or acting on behalf of, someone else.
 - (5) Divide fees with or receive compensation from a professional sports league or franchise, or its representative or employee.
 - (6) Enter into any agreement, written or oral, with or offer anything of value to any employee of an institution of higher education or school located in this state in return for that employee's induce-

ment of any athlete to enter into an agreement for representation of the athlete.

- (7) Offer anything of value to the athlete or any other person to induce an athlete to enter into an agreement, written or oral, for representation of the athlete.
 - (8) Postdate agent contracts.
 - (9) Contact an athlete in a manner so as to violate the rules of the federation or association of which that school or institution where the athlete is participating in sports contests is a member, to discuss the athlete agent's representation of the athlete in the marketing of the athlete's athletic ability or reputation.
- B. Only an athlete agent shall be allowed to contact an athlete. The use, encouragement, or solicitation of any intermediaries or third persons to contact an athlete by an athlete agent is prohibited.
- C. An athlete agent owes all of the following duties to an athlete:
- (1) A duty to disclose to the athlete any risk of loss of eligibility.
 - (2) A duty to explain to the athlete all foreseeable consequences of any athlete agent contacts.
 - (3) A duty to refrain from any contacts with an athlete until having complied with notification requirements to the institutions or schools as required by Subsection D of this Section.
 - (4) A duty to deal directly and without the use of intermediaries or any third person with any athlete.
 - (5) A duty to not provide an athlete with anything of value prior to the execution of an agent contract.
 - (6) A duty to refrain from any conduct which would cause the athlete to violate any rule of the federation or association of which the institution or school where the athlete is participating in sports contests is a member.
- D. An athlete agent owes all of the following duties to an institution or school:
- (1) A duty to comply with notification requirements to the athletic director of the institution or school the athlete attends and to the head coach of the sport in which the athlete competes.
 - (2) A duty to refrain from any conduct which would cause the institution or school to violate the rules of the federation or association of which the institution or school where the athlete is participating in sports contests is a member.
 - (3) A duty to notify the athletic director of the institution or school that the athlete attends and the head coach of the sport in which

the athlete competes seven days in advance of any contact with an athlete of an intent by the agent to contact the athlete.

- (4) A duty to notify the athletic director of the institution or school that the athlete attends and the head coach of the sport in which the athlete competes by way of written notice of the execution of an agency contract which must be given before any subsequent participation by the student athlete in interscholastic or intercollegiate athletics and not later than seventy-two hours after execution of an agent contract.
- E. Until such time as the athlete agent complies with the notification provided in Subsection D of this Section, this Chapter shall prohibit or limit an athlete agent from sending to an athlete any written materials relating to the professional credentials of the agent or to specific services offered by the agent relating to the representation of an athlete in the marketing of an athlete's athletic ability or reputation. Similarly, until such time as the athlete agent complies with the notification provided in Subsection D of this Section, this Chapter shall prohibit an athlete agent from any contact with the athlete or any third person, regardless of who attempts to initiate such contact.

§ 425. On-campus agent interviews

- A. All institutions of higher education located in this state shall sponsor athlete agent interviews on their campuses during the athlete's final year of eligibility to participate in intercollegiate athletics, and a registered athlete agent may interview the athlete to discuss the athlete agent's representation of the athlete in the marketing of the athlete's athletic ability or reputation.
- B. All institutions sponsoring athlete agent interviews shall give public notice of those interviews not later than the thirtieth day before the date on which the period in which the interviews may be conducted begins. Institutions shall provide written notice of the time, place, and duration of the athlete agent interview program to those registered athlete agents who have previously furnished the athletic director of such institutions with their addresses.
- C. The registered athlete agent shall strictly adhere to the specific rules of each separate institution with regard to the time, place, and duration of the registered athlete agent interviews. The interviews shall be conducted in the final year of eligibility during a period not to exceed thirty consecutive days.

- D. When an athletic director and head coach is given notice by an athlete agent of intent to contact an athlete, the athletic director or head coach shall, within seventy-two hours, schedule a meeting with the athlete to explain to the athlete the consequences of such contact for the athlete and for the institution. After such meeting, the athletic director or head coach shall notify the athlete agent in writing that the contact may proceed.

§ 426. Violations; penalties

- A. An athlete agent who violates the provisions of this Chapter is subject, pursuant to an adjudicatory hearing, to:
 - (1) Forfeiture of any right of repayment of anything of value either received by an athlete as an inducement to enter into any agent contract or received for any other reason.
 - (2) Payment of a refund of any consideration paid to the athlete agent on an athlete's behalf.
 - (3) Payment of reasonable attorney fees and court costs incurred by an athlete in suing an athlete agent for violation of this Chapter.
- B. Any person commits an offense if he intentionally or knowingly either files a false sworn complaint or gives false sworn testimony to any person concerning activities covered by this Chapter. This offense, upon conviction, shall be punishable by a fine of not more than one thousand dollars or by imprisonment of not more than six months, or both.
- C. Any athlete agent who fails to register as required by R.S. 4:422 shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars or by imprisonment of not more than six months, or both.
- D. Any athlete agent who violates any other duty, obligation, or responsibility prescribed by R.S. 4:424 or engages in conduct prohibited by that Section, shall, upon conviction, be guilty of a felony punishable by a fine of no less than one thousand dollars and not more than ten thousand dollars or by imprisonment with or without hard labor for up to five years, or both.
- E. Any athlete agent who fails to comply with the filing and notice requirements of R.S. 4:423 shall, upon conviction, be guilty of a misdemeanor punishable by a fine of not more than one thousand dollars or by imprisonment of not more than six months, or both.

§ 427. Records to be kept; penalties

- A. An athlete agent shall keep records of travel, entertainment, and other expenses incurred by the athlete agent which adequately describe the:
 - (1) Nature of the expenditure.
 - (2) Dollar amount of the expenditure.
 - (3) Purpose of the expenditure.
 - (4) Date and place of the expenditure.
 - (5) Person or persons in whose behalf the expenditure was made.
 - (6) Records documenting all notifications made to athletic directors or head coaches concerning intended contact with athletes.
 - (7) Written notification received from athletic directors and head coaches indicating contacts with athletes may proceed.
- B. The records required to be kept by this Section shall be retained for not less than five years by the athlete agent.
- C.
 - (1) The records provided for in this Section shall be subject to subpoena in case of a criminal investigation of the activities of the athlete agent.
 - (2) The records provided for in this Section shall be disclosed pursuant to a court order obtained by an athlete who is named in the record, an institution of higher education that is located in this state which is named in the record, and the athletic conference of which the institution is a member, or the federation or association of which the school or institution is a member. Any such disclosure shall be made only to the extent necessary to determine or establish that a violation of this Chapter has occurred.
- D. Any person found to be in violation of the recordkeeping requirements of this Section shall, upon conviction, be guilty of a misdemeanor punishable by a fine of not more than one thousand dollars or imprisonment for not more than six months, or both.

§ 428. Implementing rules and regulations

The division may adopt rules in accordance with the Administrative Procedure Act necessary to carry out the provisions of this Chapter.

§ 429. Time for registration and compliance with Chapter

An athlete agent is not required to be registered and is not required to comply with this Chapter until October 1, 1987.

§ 430. Attorneys licensed in state

- A. An attorney licensed to practice law in Louisiana who acts as an athlete agent in his practice of law shall not be required to pay a registration fee as provided in this Chapter if he is an active member of the Louisiana State Bar Association.
- B. The division shall verify with the Louisiana State Bar Association that attorneys registering as athlete agents have paid their annual membership dues and are in good standing with the association.
- C. Except as provided in Subsection A of this Section, an attorney acting as an athlete agent shall comply with all duties, obligations, responsibilities, and requirements of this Chapter and shall be subject to all provisions and penalties imposed by this Chapter for athlete agents.

§ 431. Enforcement

- A. Each year the division shall compile a list of athletes, which were signed to a contract by a professional sports team, and shall contact the appropriate players associations to determine which agents have been retained to represent those athletes.
- B. In the event that the agents retained by the athletes are not registered in this state, the division shall contact the district attorney where the athlete's school or institution of higher education is located. The district attorney's office shall take appropriate measures to investigate and prosecute any unregistered athlete agents operating in this state.
- C. The division shall inform in writing the appropriate players association of any unregistered athlete agent operating in this state.

§ 432. Liability for loss of eligibility

- A. If an athlete loses his eligibility to participate in sports sanctioned by the federation or association of which the school or institution is a member, or if the school or institution is investigated or sanctioned by such federation or association as a result of any violation of the rules of the federation or association of which the school or institution is a member, the school or institution of higher education that such athlete attended shall have a cause of action, specifically including but not limited to an action of tortious interference with a contract, against such athlete, the athlete agent of such athlete, and any other parties connected with the violation.

- B. The prevailing party under a cause of action arising under Subsection A of this Section shall also have a right to collect reasonable attorney fees and court costs in addition to any other damages.

§ 433. Unlawful payments; penalties

- A. Notwithstanding any other provision of this Chapter to the contrary, it shall be unlawful for any person to make or offer a monetary payment, or anything of value to an athlete or any other person where such offer does any one or both of the following:
 - (1) Causes the athlete to lose his eligibility to participate in sports sanctioned by the federation or association of which the school or institution is a member.
 - (2) Causes the institution of higher education or school which the athlete attended or was being recruited to participate in sports contests at the time the payment or thing of value was received, to be investigated or placed on probation, penalized, or otherwise sanctioned by the federation or association of which the school or institution is a member.
- B. The athlete and the institution or school shall each have an independent cause of action, specifically including but not limited to a cause of action for tortious interference with an athlete contract against such person for damages, reasonable attorney fees, and court costs.
- C. Any person found to be in violation of the provisions of this Section shall, upon conviction, be guilty of a felony punishable by a fine of not more than ten thousand dollars or imprisonment, with or without hard labor, for not more than five years, or both.

MARYLAND

MD. Code Ann., Bus. Reg. § 4-401 to § 4-426 (West 2004)

§ 4-401. Definitions

- (a) In this subtitle the following words have the meanings indicated.
- (b) “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.
- (c)
 - (1) “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.
 - (2) “Athlete agent” includes an individual who represents to the public that the individual is an athlete agent.
 - (3) “Athlete agent” 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.
- (d) “Athletic director” means an individual responsible for administering:
 - (1) the overall athletic program of an educational institution; or
 - (2) the athletic program for males or the athletic program for females if an educational institution has separately administered athletic programs for male students and female students, as appropriate.
- (e) “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.
- (f) “Endorsement contract” means an agreement under which a student-athlete is employed or receives consideration to use on behalf of another party for any value that the student-athlete may have due to publicity, reputation, following, or fame obtained due to athletic ability or performance.
- (g) “Intercollegiate sport” means a sport played at the collegiate level for which eligibility requirements of a student-athlete are established by

a national association for the promotion or regulation of collegiate athletics.

- (h) "License" means a license issued by the Secretary to act as an athlete agent.
- (i) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency or instrumentality, public corporation, or any other legal or commercial entity.
- (j) "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.
- (k) "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.
- (l) "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.
- (m)
 - (1) "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.
 - (2) "Student-athlete" includes an individual who is or was a member of a sports team of a high school.
 - (3) "Student-athlete" does not include an individual permanently ineligible to participate in a particular sport.

§ 4-402. Agent for service of process; subpoenas

- (a) By acting as an athlete agent in the State, a nonresident individual appoints the Secretary as the individual's agent for service of process in any civil action in the State related to the individual's acting as an athlete agent in the State.
- (b) The Secretary may issue subpoenas for any material that is relevant to the administration of this subtitle.

§ 4-403. License requirement

- (a) Except as otherwise provided in subsection (b) of this section, an individual may not act as an athlete agent in the State without holding a license under § 4-405 of this subtitle.

- (b) Before being issued a license, an individual may act as an athlete agent in the State 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
 - (2) within 7 days after an initial act as an athlete agent, the individual submits an application for a license as an athlete agent in the State.
- (c) An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract.

§ 4-404. License applications

- (a) An applicant for a license shall:
 - (1) submit to the Secretary an application on the form the Secretary requires; and
 - (2) pay to the Secretary a \$25 application fee.
- (b) In addition to any other information required on the application, the application must be in the name of an individual and, except as otherwise provided in subsection (d) of this section, signed or otherwise authenticated by the applicant under penalty of perjury and state or contain:
 - (1) the name of the applicant and the address of the applicant's principal place of business;
 - (2) the name of the applicant's business or employer, if applicable;
 - (3) any business or occupation engaged in by the applicant for 5 years before the date of the application;
 - (4) 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;
 - (5) the names and addresses of three individuals not related to the applicant who are willing to serve as references;
 - (6) the name, sport, and last known team for each individual for whom the applicant acted as an athlete agent during the 5 years before the date of the application;
 - (7) the names and addresses of all persons who are:

- (i) with respect to the athlete agent's business if it is not a corporation, the partners, members, officers, managers, associates, or profit sharers of the business; and
 - (ii) with respect to a corporation employing the athlete agent, the officer's directors, and any shareholder of the corporation having an interest of 5% or greater;
 - (8) whether the applicant or any person named in accordance with item (7) of this subsection has been convicted of a crime that, if committed in the State, would be a crime involving moral turpitude or a felony, and identify the crime;
 - (9) whether there has been any administrative or judicial determination that the applicant or any person named in accordance with item (7) of this subsection has made a false, misleading, deceptive, or **fraudulent** representation;
 - (10) any instance in which the conduct of the applicant or any person named in accordance with item (7) of this subsection resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or educational institution;
 - (11) any sanction, suspension, or disciplinary action taken against the applicant or any person named in accordance with item (7) of this subsection arising out of occupational or professional misconduct; and
 - (12) whether there has been any denial of an application for, suspension or revocation of, or refusal to renew the registration or licensure of the applicant or any person named in accordance with item (7) of this subsection as an athlete agent in any state.
- (c) Notwithstanding subsection (b)(7) of this section, an applicant who is a member of the Bar of the Court of Appeals of Maryland need not provide the name and address of a person who is a partner, member, associate, or profit sharer in a law firm or professional corporation.
- (d) (1) An individual who has submitted an application for, and holds a certificate of registration or licensure as an athlete agent in another state, may submit a copy of the application and certificate in lieu of submitting an application in the form required under subsection (b) of this section.
- (2) The Secretary shall accept the application and the certificate from the other state as an application for a license in the State if the application to the other state:

- (i) was submitted in the other state 6 months before the submission of the application in the State and the applicant certifies that the information contained in the application is current;
- (ii) contains information substantially similar to or more comprehensive than that required in an application submitted in the State; and
- (iii) was signed by the applicant under penalty of perjury.

§ 4-405. Same—Issuance or denial or license

- (a) Except as otherwise provided in subsection (b) of this section, the Secretary shall issue a license to an individual who:
 - (1) complies with § 4-404(a) of this subtitle or whose application has been accepted under § 4-404(d) of this subtitle; and
 - (2) pays to the Secretary a \$1,000 license fee.
- (b)
 - (1) Subject to the hearing provisions of § 4-407 of this subtitle, the Secretary may deny a license if the Secretary determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent.
 - (2) In making the determination under paragraph (1) of this subsection, the Secretary may consider whether the applicant has:
 - (i) been convicted of a crime that, if committed in the State, would be a crime involving moral turpitude or a felony;
 - (ii) made a materially false, misleading, deceptive, or **fraudulent** representation in the application or as an athlete agent;
 - (iii) engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;
 - (iv) engaged in conduct prohibited by § 4-413 of this subtitle;
 - (v) 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;
 - (vi) 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;
 - (vii) engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty, or integrity; or
 - (viii) failed to demonstrate financial stability.

- (c) In making a determination under subsection (b) of this section, the Secretary 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) (1) An athlete agent may apply to renew a license by:
 - (i) submitting an application for renewal in a form required by the Secretary; and
 - (ii) paying to the Secretary a \$1,000 renewal fee.
- (2) 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 application for a license.
- (e) (1) 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 required under subsection (d) of this section, may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state.
- (2) The Secretary shall accept the application for renewal from the other state as an application for renewal in the State if the application for the other state:
 - (i) was submitted in the other state within 6 months before the filing in the State and the applicant certifies the information contained in the application for renewal is current;
 - (ii) contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in the State; and
 - (iii) was signed by the applicant under penalty of perjury.
- (f) A license or a renewal is valid for 2 years.

§ 4-406. License sanctions

- (a) Subject to the hearing provisions of § 4-407 of this subtitle, the Secretary may reprimand a licensee, suspend, or revoke a license for conduct that would have justified denial of a license under § 4-405(b) of this subtitle.

- (b) (1) Instead of or in addition to reprimanding the licensee or suspending or revoking a license under subsection (a) of this section, the Secretary may assess a civil penalty under § 4-416 of this subtitle.
- (2) The Secretary shall pay any penalty collected under this subsection into the General Fund of the State.

§ 4-407. Hearing

- (a) Except as provided in 10-226 of the State Government Article, before the Secretary takes any final action under § 4-405(b) § 4-406, or § 4-416 of this subtitle, the Secretary shall give the person against whom the action is contemplated an opportunity for a hearing before the Secretary.
- (b) The Secretary shall give notice and hold the hearing in accordance with Title 10, Subtitle 2 of the State Government Article.
- (c) The Secretary may administer oaths in a proceeding under this section.
- (d) If, after due notice, the person against whom the action is contemplated does not appear, the Secretary may hear and determine the matter.

§ 4-408. Moneys to General Fund

The Secretary shall pay all moneys collected under this subtitle into the General Fund of the State.

§ 4-409. Agency contract

- (a) An agency contract must be in a record signed or otherwise authenticated by the parties.
- (b) An agency contract must state or 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 a license or renewal of a license 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 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, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND
 - (3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.”
- (d) (1) An agency contract that does not conform to this section is voidable by the student-athlete.
- (2) If a student-athlete voids an agency contract under this section, 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.
- (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.

§ 4-410. Notice of agency contracts

- (a) Within 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 the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.
- (b) Within 72 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 or in which the student-athlete intends to enroll that the student-athlete has entered into an agency contract.

§ 4-411. Cancellation of agency contracts

- (a) A student-athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within 14 days after the contract is signed.
- (b) A student-athlete may not waive the right to cancel an agency contract.
- (c) If a student-athlete cancels an agency contract, the student- athlete is not required to pay 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:

§ 4-412. Retention of records

- (a) An athlete agent shall retain the following records for a period of 5 years:
 - (1) the name of each individual represented by the athlete agent;
 - (2) the address of each individual represented by the athlete agent;
 - (3) any agency contract entered into by the athlete agent; and
 - (4) any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract.
- (b) Records required to be retained by subsection (a) of this section are open to inspection by the Secretary during normal business hours.

§ 4-413. Prohibited conduct

- (a) An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, may not:
 - (1) give any 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 any individual other than the student-athlete or another licensed athlete agent.

- (b) An athlete agent may not intentionally:
 - (1) initiate contact with a student-athlete unless licensed under this subtitle;
 - (2) refuse or fail to retain or permit inspection of the records required to be retained by § 4-412 of this subtitle;
 - (3) fail to obtain a license when required by § 4-403 of this subtitle;
 - (4) provide materially false or misleading information in an application for a license or renewal of a license;
 - (5) predate or postdate an agency contract; or
 - (6) fail to notify a student-athlete before the student-athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate as a student-athlete in that sport.
- (c) An athlete agent may not split a fee with or receive compensation from:
 - (1) a professional sports league;
 - (2) a professional sports franchise;
 - (3) a representative or employee of a professional sports league or franchise; or
 - (4) an employee of an educational institution in the State.

§ 4-414. Criminal Penalties

An athlete agent who violates § 4-413 of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$10,000 or imprisonment not exceeding 1 year or both.

§ 4-415. Civil actions

- (a)
 - (1) An educational institution has a right of action against an athlete agent or a former student-athlete for damages caused by violation of this subtitle.
 - (2) In an action under this section, the court may award to the prevailing party costs and reasonable attorney's fees.
- (b) Damages to an educational institution under subsection (a) of this section include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student-athlete, the educational institution was injured by a violation of this subtitle 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 under 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) Any liability of the athlete agent or the former student-athlete under this section is several and not joint.
- (e) This subtitle does not restrict rights, remedies, or defenses of any person under law or equity.

§ 4-416. Administrative penalties

- (a) Except as otherwise provided in this subtitle and subject to the provisions of § 4-407 of this subtitle, the Secretary may assess a civil penalty against a person who violates any provision of this subtitle not to exceed \$25,000.
- (b) To determine the amount of the penalty, the Secretary shall consider:
 - (1) the seriousness of the violation;
 - (2) the harm caused by the violation;
 - (3) the good faith of the violator;
 - (4) any history of previous violations by the violator; and
 - (5) any other relevant factors.
- (c) The Secretary shall pay any penalty collected under this section into the General Fund of the State.

§ 4-417. Application and construction of subtitle

In applying and construing this subtitle, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 4-418. Electronic records or signatures

The provisions of this subtitle governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000), and

supersede, modify, and limit the Electronic Signatures in Global and National Commerce Act.

§ 4-419. Severability

If any provision of this subtitle or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this subtitle which can be given effect without the invalid provision or application, and to this end the provisions of this subtitle are severable.

§ 4-420. Regulations

The Secretary shall adopt regulations to carry out this subtitle.

§ 4-421. Short title

This subtitle is the Maryland Uniform Athlete Agents Act.

§§ 4-422 to 4-426

Repealed by Acts 2003, c. 421, § 1, eff. Oct. 1, 2003

MICHIGAN

Section 750.411e

§ 750.411e Athletic agent; prohibited conduct; violation as misdemeanor; penalty; definitions.

- (1) An athlete agent shall not do either of the following:
 - (a) Induce a student athlete to enter into an agent contract or professional sport services contract before the student athlete's eligibility for collegiate athletics expires.
 - (b) Enter into an agreement whereby the athlete agent gives, offers, or promises anything of value to an employee of an institution of higher education in return for the referral of a student athlete by that employee.
- (2) An athlete agent who violates subsection (1) is guilty of a misdemeanor, punishable by a fine of not more than \$50,000.00 or an amount equal to 3 times the amount given, offered, or promised as an inducement as described in subsection (1)(a) or 3 times the value of the agreement entered into as described in subsection (1)(b), whichever is greater, or imprisonment for not more than 1 year, or both.
- (3) As used in this section:
 - (a) "Agent contract" means any contract or agreement pursuant to which a person authorizes or empowers an athlete agent to negotiate or solicit on behalf of the person with 1 or more professional sport teams for the employment of the person by a professional sport team or to negotiate or solicit on behalf of the person for the employment of the person as a professional athlete.
 - (b) "Athlete agent" means a person who, directly or indirectly, recruits or solicits a person to enter into an agent contract or professional sport services contract, or who procures, offers, promises, or attempts to obtain employment for a person with a professional sport team or as a professional athlete. Athlete agent does not include a member of a person's immediate family.
 - (c) "Immediate family" means a person's spouse, child, parent, step-parent, grandparent, grandchild, brother, sister, parent-in-law,

brother-in-law, sister-in-law, nephew, niece, aunt, uncle, first cousin, or the spouse or guardian of any of the persons described in this subdivision.

- (d) "Institution of higher education" means a public or private college or university.
- (e) "Person" means an individual, sole proprietorship, partnership, association, corporation, or other legal entity.
- (f) "Professional sport services contract" means a contract or agreement pursuant to which a person is employed or agrees to render services as a player on a professional sport team or as a professional athlete.
- (g) "Student athlete" means an individual who engages in, is eligible to engage in, or may be eligible to engage in any intercollegiate sporting event, contest, exhibition, or program.

History: Add. 1988, Act 476, Imd. Eff. Dec. 28, 1988

MINNESOTA

Minn. Stat. Ann. § 81A.01 to § 81A.21 (West Supp. 2006)

§ 81A.01. Short title

Sections 81A.01 to 81A.21 may be cited as the Uniform Athlete Agents Act.

§ 81A.02. Definitions

Subdivision 1. Terms. For purposes of sections 81A.01 to 81A.21, the terms defined in this section have the meanings given them.

Subd. 2. Agency contract. “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.

Subd. 3. Athlete agent. “Athlete agent” means an individual who enters into an agency contract with a student athlete or, directly or indirectly for remuneration, 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.

Subd. 4. Athletic director. “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.

Subd. 5. Commissioner. “Commissioner” means the commissioner of commerce.

Subd. 6. Contact. “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.

Subd. 7. Endorsement contract. “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.

Subd. 8. Intercollegiate sport. “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.

Subd. 9. Person. “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, or joint venture; government, governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

Subd. 10. Professional sports services contract. “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.

Subd. 11. Record. “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.

Subd. 12. Registration. “Registration” means registration as an athlete agent under sections 81A.01 to 81A.21.

Subd. 13. State. “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.

Subd. 14. Student athlete. “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.

§ 81A.03. Service of process; investigating powers

Subdivision 1. Appointment of agent. By acting as an athlete agent in this state, a nonresident individual appoints the commissioner as the individual's agent for service of process in any civil action in this state related to the individual's acting as an athlete agent in this state.

Subd. 2. Subpoena and enforcement powers. The commissioner may issue subpoenas for any material that is relevant to the administration of sections 81A.01 to 81A.21 and exercise other enforcement powers available to the commissioner under chapter 45.

§ 81A.04. Certificate of registration required

Subdivision 1. General requirement. Except as otherwise provided in subdivision 2, an individual may not act as an athlete agent in this state without holding a certificate of registration under section 81A.06 or 81A.08.

Subd. 2. Exceptions. Before being issued a certificate of registration, an individual may act as an athlete agent in this state for all purposes except signing an agency contract, if:

- (1) a student athlete or another person acting on behalf of the student athlete initiates communication with the individual; and
- (2) within seven days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in this state.

Subd. 3. Contracts void. An agency contract resulting from conduct in violation of this section is void, and the athlete agent shall return any consideration received under the contract.

§ 81A.05. Registration process

Subdivision 1. Requirements. An applicant for registration shall submit an application for registration to the commissioner in a form prescribed by the commissioner. The application must be in the name of an individual and, except as otherwise provided in subdivision 2, signed or otherwise authenticated by the applicant under penalty of perjury, and state or contain:

- (1) the name of the applicant and the address of the applicant's principal place of business;
- (2) the name of the applicant's business or employer, if applicable;

- (3) any business or occupation engaged in by the applicant for the five years next preceding the date of submission of the application;
- (4) a description of the applicant's:
 - (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;
- (5) the names and addresses of three individuals not related to the applicant who are willing to serve as references;
- (6) the name, sport, and last known team for each individual for whom the applicant acted as an athlete agent during the five years next preceding the date of submission of the application;
- (7) the names and addresses of all persons who are:
 - (i) with respect to the athlete agent's business if it is not a corporation, the partners, members, officers, managers, associates, or profit-sharers of the business; and
 - (ii) with respect to a corporation employing the athlete agent, the officers, directors, and any shareholder of the corporation having an interest of five percent or greater;
- (8) whether the applicant or any person named under clause (7) has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony, and identify the crime;
- (9) whether there has been any administrative or judicial determination that the applicant or any person named under clause (7) has made a false, misleading, deceptive, or **fraudulent** representation;
- (10) any instance in which the conduct of the applicant or any person named under clause (7) resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student athlete or educational institution;
- (11) any sanction, suspension, or disciplinary action taken against the applicant or any person named under clause (7) arising out of occupational or professional conduct; and
- (12) whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any person named under clause (7) as an athlete agent in any state.

Subd. 2. Reciprocal applications or certificates. An individual who has submitted an application for, and holds a certificate of, registration or

licensure as an athlete agent in another state may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed under subdivision 1. The commissioner must accept the application and the certificate from the other state as an application for registration in this state if the application to the other state:

- (1) was submitted in the other state within six months next preceding the submission of the application in this state and the applicant certifies that the information contained in the application is current;
- (2) contains information substantially similar to or more comprehensive than that required in an application submitted in this state; and
- (3) was signed by the applicant under penalty of perjury.

§ 81A.06. Issuance of certificate of registration

Subdivision 1. Authority. Except as otherwise provided in subdivision 2, the commissioner must issue a certificate of registration to an individual who complies with section 81A.05, subdivision 1, or whose application has been accepted under section 81A.05, subdivision 2.

Subd. 2. Refusal.

- (a) The commissioner may refuse to issue a certificate of registration if the commissioner determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the commissioner may consider whether the applicant has:
 - (1) been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony;
 - (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 81A.14
 - (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.
- (b) In making a determination under paragraph (a), the commissioner 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.

Subd. 3. Renewals. An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the commissioner. 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.

Subd. 4. Reciprocal renewals. 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 under subdivision 3, may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. The commissioner must 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.

Subd. 5. Term. A certificate of registration or a renewal of a registration is valid for two years.

§ 81A.07. Suspension, revocation, or refusal to renew registration

Subdivision 1. Authority. The commissioner may suspend, revoke, or refuse to renew a registration for conduct that would have justified denial of registration under section 81A.06, subdivision 2.

Subd. 2. Notice and hearing requirements. The commissioner may deny, suspend, revoke, or refuse to renew a certificate of registration or licensure only under chapter 14.

§ 81A.08. Temporary registration

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

§ 81A.09. Registration and renewal fees

An application for registration must be accompanied by a \$500 fee. An application for renewal of registration must be accompanied by a \$400 fee.

§ 81A.10. Form of contract

Subdivision 1. Required authentication. An agency contract must be in a record, signed or otherwise authenticated by the parties.

Subd. 2. Contents. An agency contract must state or 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.

Subd. 3. Notice. 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, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND

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

Subd. 4. Voidability. 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.

Subd. 5. Record to student athlete. The athlete agent shall give a record of the signed or otherwise authenticated agency contract to the student athlete at the time of execution.

§ 81A.11. Notice to educational institution

Subdivision 1. By athlete agent. Within 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 must 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 athlete agent has reasonable grounds to believe the student athlete intends to enroll.

Subd. 2. By student athlete. Within 72 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 must 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. The commissioner has no enforcement authority with respect to a violation of this subdivision by a student athlete.

§ 81A.12. Student athlete's right to cancel

Subdivision 1. Generally. A student athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within 14 days after the contract is signed.

Subd. 2. Nonwaivability. A student athlete may not waive the right to cancel an agency contract.

Subd. 3. Effect. If a student athlete cancels 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.

§ 81A.13. Required records

Subdivision 1. Retention. An athlete agent must retain the following records for a period of five years:

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

Subd. 2. Inspection rights. Records required by subdivision 1 to be retained are open to inspection by the commissioner during normal business hours.

§ 81A.14. Prohibited conduct

Subdivision 1. Conduct intended to induce a student athlete to enter into an agency contract. An athlete agent, with the intent to induce a student athlete to enter into an agency contract, may not:

- (1) give any 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 any individual other than the student athlete or another registered athlete agent.

Subd. 2. Other intentional conduct. An athlete agent may not intentionally:

- (1) initiate contact with a student athlete unless registered under sections 81A.01 to 81A.21;
- (2) refuse or fail to retain or permit inspection of the records required to be retained by section 81A.13;
- (3) fail to register when required by section 81A.04;
- (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 before the student athlete signs or otherwise authenticates an agency contract for a particular sport that the

signing or authentication may make the student athlete ineligible to participate as a student athlete in that sport.

Subd. 3. Misconduct of athlete agents. An athlete agent must not violate section 325E.33

§ 81A.15. Criminal penalties

An athlete agent who violates section 81A.14 is guilty of a gross misdemeanor.

§ 81A.16. Civil remedies

Subdivision 1. Private right of action by educational institution. An educational institution has a right of action against an athlete agent or a former student athlete for damages caused by a violation of sections 81A.01 to 81A.21. In an action under this section, the court may award costs and reasonable attorney's fees.

Subd. 2. Damages. Damages of an educational institution under subdivision 1 include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student athlete, the educational institution was injured by a violation of sections 81A.01 to 81A.21 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.

Subd. 3. Accrual of action. A right of action under 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.

Subd. 4. Several liability. Any liability of the athlete agent or the former student athlete under this section is several and not joint.

Subd. 5. Other rights, remedies, or defenses. Sections 81A.01 to 81A.21 do not restrict rights, remedies, or defenses of any person under law or equity.

§ 81A.17. Administrative penalty

The commissioner may assess a civil penalty against an athlete agent not to exceed \$25,000 for a violation of sections 81A.01 to 81A.21, in accordance with chapters 14 and 45.

§ 81A.18. Uniformity of application and construction

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.

§ 81A.19. Electronic signatures in global and national commerce act

Sections 81A.01 to 81A.21 governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures are intended to conform to the requirements of section 102 of the Electronic Signatures in Global and National Commerce Act, Public Law 106-229, 114 Stat. 464 (2000), and supersede, modify, and limit the Electronic Signatures in Global and National Commerce Act.

§ 81A.20. Severability

If any provision of sections 81A.01 to 81A.21 or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of sections 81A.01 to 81A.21 which can be given effect without the invalid provision or application, and to this end the provisions of sections 81A.01 to 81A.21 are severable.

§ 81A.21. Effect on other law

Sections 81A.01 to 81A.21 do not limit the applicability of section 325E.33.

MISSISSIPPI

Miss. Code Ann. § 73-42-1 to § 73-42-35 (West 2004)

§ 73-42-1. Short title

This chapter may be cited as the “Uniform Athlete Agents Act.”

§ 73-42-3. Definitions

In this chapter:

(a) “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.

(b) “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 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. The term includes an individual who represents to the public that the individual is an athlete agent.

(c) “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.

(d) “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.

(e) “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.

(f) “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.

(g) "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.

(h) "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.

(i) "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.

(j) "Registration" means registration as an athlete agent pursuant to this chapter.

(k) "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.

(l) "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.

§ 73-42-5. Administration; service of process; subpoenas

- (1) The Secretary of State shall administer this chapter.
- (2) By engaging in the business of an athlete agent in this state, a non-resident individual appoints the Secretary of State as the individual's agent to accept service of process in any civil action related to the individual's business as an athlete agent in this state.
- (3) The Secretary of State may issue subpoenas for any relevant material under this chapter.

§ 73-42-7. Athlete agents; registration required

- (1) Except as otherwise provided in subsection (2), an individual may not act as an athlete agent in this state before being issued a certificate of registration under Section 73-42-11 or 73-42-15.

- (2) An individual may act as an athlete agent before being issued a certificate of registration for all purposes except signing an agency contract if:
 - (a) A student-athlete or another acting on behalf of the student-athlete initiates communication with the individual; and
 - (b) Within seven (7) days after an initial act as an athlete agent, the individual submits an application to register as an athlete agent in this state.
- (3) An agency contract resulting from conduct in violation of this section is void. The athlete agent shall return any consideration received under the contract.

§ 73-42-9. Registration as athlete agent; form; requirements

- (1) An applicant for registration shall submit an application for registration to the Secretary of State in a form prescribed by the Secretary of State. An application filed under this section is a public record. Except as otherwise provided in subsection (2), the application must be in the name of an individual and signed by the applicant under penalty of perjury and must state or contain:
 - (a) The name of the applicant and the address of the applicant's principal place of business;
 - (b) The name of the applicant's business or employer, if applicable;
 - (c) Any business or occupation engaged in by the applicant for the five (5) years next preceding the date of submission of the application;
 - (d) 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.
 - (e) The names and addresses of three (3) individuals not related to the applicant who are willing to serve as references;
 - (f) The name, sport and last known team for each individual for whom the applicant provided services as an athlete agent during the five (5) years next preceding the date of submission of the application;
 - (g) The names and addresses of all persons who are:

- (i) With respect to the athlete agent's business if it is not a corporation, the partners, officers, associates or profit-sharers; and
 - (ii) With respect to a corporation employing the athlete agent, the officers, directors and any shareholder of the corporation with a five percent (5%) or greater interest.
- (h) Whether the applicant or any other person named pursuant to paragraph (g) has been convicted of a crime that, if committed in this state, would be a felony or other crime involving moral turpitude, and identify the crime.
- (i) Whether there has been any administrative or judicial determination that the applicant or any other person named pursuant to paragraph (g) has made a false, misleading, deceptive or **fraudulent** representation;
- (j) Any instance in which the conduct of the applicant or any other person named pursuant to paragraph (g) resulted in the imposition of a sanction, suspension or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or educational institution;
- (k) Any sanction, suspension or disciplinary action taken against the applicant or any other person named pursuant to paragraph (g) arising out of occupational or professional conduct; and
- (l) Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any other person named pursuant to paragraph (g) as an athlete agent in any state.
- (2) An individual who has submitted an application for, and received a certificate of, registration or licensure as an athlete agent in another state, may submit a copy of the application and a valid certificate of registration or licensure from the other state in lieu of submitting an application in the form prescribed pursuant to subsection (1). The Secretary of State shall accept the application and the certificate from the other state as an application for registration in this state if the application to the other state:
- (a) Was submitted in the other state within the six (6) months next preceding the submission of the application in this state and the applicant certifies the information contained in the application is current;

- (b) Contains information substantially similar to or more comprehensive than that required in an application submitted in this state; and
- (c) Was signed by the applicant under penalty of perjury.

§ 73-42-11. Certificate of registration; issuance or denial; renewal

- (1) Except as otherwise provided in subsection (3), the Secretary of State shall issue a certificate of registration to an individual who complies with Section 73-42-9(1).
- (2) Except as otherwise provided in subsection (3), the Secretary of State shall issue a certificate of registration to an individual whose application has been accepted under Section 73-42-9(2).
- (3) The Secretary of State may refuse to issue a certificate of registration if the Secretary of State determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to serve as an athlete agent. In making the determination, the Secretary of State may consider whether the applicant has:
 - (a) Been convicted of a crime that, if committed in this state, would be a felony or other crime involving moral turpitude;
 - (b) Made a materially false, misleading, deceptive or **fraudulent** representation as an athlete agent or in the application;
 - (c) Engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;
 - (d) Engaged in conduct prohibited by Section 14;
 - (e) Had a registration or licensure as an athlete agent suspended, revoked, or denied or been refused renewal of registration or licensure in any state;
 - (f) Engaged in conduct or failed to engage 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
 - (g) Engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty or integrity.
- (4) In making a determination under subsection (3), the Secretary of State shall consider:
 - (a) How recently the conduct occurred;
 - (b) The nature of the conduct and the context in which it occurred; and
 - (c) Any other relevant conduct of the applicant.

- (5) An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the Secretary of State. An application filed under 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.
- (6) 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 (5), may file a copy of the application for renewal and a valid certificate of registration from the other state. The Secretary of State 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:
 - (a) Was submitted in the other state within the last six (6) months and the applicant certifies the information contained in the application for renewal is current;
 - (b) Contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this state; and
 - (c) Was signed by the applicant under penalty of perjury.
- (7) A certificate of registration or a renewal of a registration is valid for two (2) years.

§ 73-42-13. Suspension, revocation or refusal to renew registration

- (1) The Secretary of State may suspend, revoke or refuse to renew a registration for conduct that would have justified denial of registration under Section 73-42-11(3).
- (2) The Secretary of State may deny, suspend, revoke or refuse to renew a registration only after proper notice and an opportunity for a hearing.
- (3) (a) The Secretary of State shall appoint at least one (1) hearing officer for the purpose of holding hearings, compiling evidence and rendering decisions under this section and Section 73-42-11. The hearing officer shall fix the date for adjudicatory hearings and notify the athlete agent involved. Such hearing shall be held at a location to be designated by the hearing officer, not less than fifteen (15) nor more than thirty (30) days after the mailing of notice to the athlete agent involved. At the conclusion of the

hearing, the hearing officer shall take appropriate action regarding the registration of the athlete agent involved.

- (b) Any athlete agent whose application for registration has been denied or not renewed, or whose registration has been revoked or suspended by the hearing officer, within thirty (30) days after the date of such final decision, shall have the right of a trial de novo on appeal to the Circuit Court of the First Judicial District of Hinds County, Mississippi. Either party shall have the right of appeal to the Supreme Court as provided by law from any decision of the circuit court. No athlete agent shall be allowed to deliver services to a Mississippi NCAA athlete while any such appeal is pending.
- (4) In addition to the reasons specified in subsection (1) and (2) of this section, the secretary shall be authorized to suspend the registration of any person for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a registration for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a registration suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a registration suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. Actions taken by the secretary in suspending the registration of a person when required by Section 93-11-157 are not actions from which an appeal may be taken under this section. Any appeal of a registration suspension that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

§ 73-42-15. Temporary registration

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

§ 73-42-17. Registration and renewal fee

An application for registration or renewal of registration must be accompanied by a fee in the following amount:

- (a) One Hundred Dollars (\$100.00) for an initial application for registration;
- (b) One Hundred Dollars (\$100.00) for an application for registration based upon a certificate of registration or licensure issued by another state;
- (c) Fifty Dollars (\$50.00) for an application for renewal of registration; or
- (d) Fifty Dollars (\$50.00) for an application for renewal of registration based upon an application for renewal of registration or licensure submitted in another state.

§ 73-42-19. Form of contract

- (1) An agency contract must be in a record, signed by the parties.
- (2) An agency contract must state or contain:
 - (a) 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;
 - (b) The name of any person not listed in the application for registration or renewal who will be compensated because the student-athlete signed the agency contract;
 - (c) A description of any expenses that the student-athlete agrees to reimburse;
 - (d) A description of the services to be provided to the student-athlete;
 - (e) The duration of the contract; and
 - (f) The date of execution.
- (3) 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) BOTH YOU AND YOUR ATHLETE AGENT ARE REQUIRED TO TELL YOUR ATHLETIC DIRECTOR, IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER ENTERING INTO AN AGENCY CONTRACT; AND
- (3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THE CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.
- (4) An agency contract that does not conform to this section is voidable by the student-athlete.
- (5) The athlete agent shall give a copy of the signed agency contract to the student-athlete at the time of signing.

§ 73-42-21. Notice to educational institution

- (1) Within seventy-two (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 the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.
- (2) Within seventy-two (72) 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.

§ 73-42-23. Student athlete's right to cancel

- (1) A student-athlete may cancel an agency contract by giving notice in a record to the athlete agent of the cancellation within fourteen (14) days after the contract is signed.
- (2) A student-athlete may not waive the right to cancel any agency contract.
- (3) If a student-athlete cancels an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the agent to induce the student-athlete to enter into the contract.

§ 73-42-25. Required records

- (1) An athlete agent shall retain the following records for a period of five (5) years:
 - (a) The name and address of each individual represented by the athlete agent;
 - (b) Any agency contract entered into by the athlete agent; and
 - (c) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete.
- (2) Records required by subsection (1) to be retained are open to inspection by the Secretary of State during normal business hours.

§ 73-42-27. Prohibited acts

- (1) An athlete agent may not do any of the following with the intent to induce a student-athlete to enter into an agency contract:
 - (a) Give any materially false or misleading information or make a materially false promise or representation;
 - (b) Furnish anything of value to a student-athlete before the student-athlete enters into the agency contract; or
 - (c) Furnish anything of value to any individual other than the student-athlete or another registered athlete agent.
- (2) An athlete agent may not intentionally:
 - (a) Initiate contact with a student-athlete unless registered under this chapter;
 - (b) Refuse or willfully fail to retain or permit inspection of the records required by Section 73-42-25;
 - (c) Violate Section 73-42-7 by failing to register;
 - (d) Provide materially false or misleading information in an application for registration or renewal of registration;
 - (e) Predate or postdate an agency contract; or
 - (f) Fail to notify a student-athlete prior to the student-athlete's signing an agency contract for a particular sport that the signing by the student-athlete may make the student-athlete ineligible to participate as a student-athlete in that sport.

§ 73-42-29. Criminal penalties

The commission of any act prohibited by Section 73-42-27 by an athlete agent is a felony punishable by a fine of not more than Ten Thousand Dollars (\$10,000.00) or by imprisonment of not more than two (2) years, or both.

§ 73-42-31. Civil remedies

- (1) 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 under this section, the court may award to the prevailing party costs and reasonable attorney's fees.
- (2) Damages of an educational institution under subsection (1) include losses and expenses incurred because, as a result of the activities of an athlete agent or former student-athlete, 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.
- (3) A right of action under 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.
- (4) Any liability of the athlete agent or the former student-athlete under this section is several and not joint.
- (5) This chapter does not restrict rights, remedies or defenses of any person under law or equity.

§ 73-42-33. Administrative penalty

The Secretary of State may assess a civil penalty against an athlete agent not to exceed Twenty-five Thousand Dollars (\$25,000.00) for a violation of this chapter.

§ 73-42-35. Application and construction

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 of this chapter among states that enact it.

MISSOURI

Mo. Ann. Stat. § 436.215 to § 436.272 (West Supp. 2007)

§ 436.215. Title of act

Sections 436.215 to 436.272 may be cited as the “Uniform Athlete Agents Act”.

§ 436.218. Definitions

As used in sections 436.215 to 436.272, the following terms mean:

(1) “Agency contract”, 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”, 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 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. The term includes an individual who represents to the public that the individual is an athlete agent;

(3) “Athletic director”, 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”, a direct or indirect communication between an athlete agent and a student athlete to recruit or solicit the student athlete to enter into an agency contract;

(5) “Director”, the director of the division of professional registration;

(6) “Division”, the division of professional registration;

(7) “Endorsement contract”, 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, repu-

tation, following, or fame obtained because of athletic ability or performance;

(8) "Intercollegiate sport", 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;

(9) "Person", 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;

(10) "Professional sports services contract", 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;

(11) "Record", information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(12) "Registration", registration as an athlete agent under sections 436.215 to 436.272;

(13) "State", 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;

(14) "Student athlete", a current student who engages in, has engaged in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport.

§ 436.221. Administration of provisions

1. The director shall administer the provisions of sections 436.215 to 436.272.
2. By engaging in the business of an athlete agent in this state, a non-resident individual appoints the director as the individual's agent to accept service of process in any civil action related to the individual's business as an athlete agent in this state.
3. The director may subpoena witnesses, issue subpoenas duces tecum and require production of documents and records. Subpoenas including subpoenas duces tecum shall be served by a person authorized to serve subpoenas of courts of record. In lieu of requiring attendance of a person to produce original documents in response to a subpoena duces tecum, the board may require sworn copies of such documents to be filed with it or delivered to its designated representative.

4. The director may enforce its subpoenas including subpoenas duces tecum by applying to a circuit court of Cole County, the county of the investigation, hearing or proceeding, or any county where the person resides or may be found for an order upon any person who shall fail to obey a subpoena to show cause why such subpoena should not be enforced, which such order and a copy of the application therefor shall be served upon the person in the same manner as a summons in a civil action and if the circuit court shall after a hearing determine that the subpoena should be sustained and enforced such court shall proceed to enforce the subpoena in the same manner as though the subpoena had been issued in a civil case in the circuit court.

§ 436.224. Athlete agents, certificate of registration

1. Except as otherwise provided in subsection 2 of this section, an individual may not act as an athlete agent in this state before being issued a certificate of registration under section 436.230 or 436.236.
2. An individual with a temporary license under section 436.236 may act as an athlete agent before being issued a certificate of registration for all purposes except signing an agency contract if:
 - (1) A student athlete or another acting on behalf of the student athlete initiates communication with the individual; and
 - (2) Within seven days after an initial act as an athlete agent, the individual submits an application to register as an athlete agent in this state.
3. An agency contract resulting from conduct in violation of this section is void. The athlete agent shall return any consideration received under the contract.

§ 436.227. Application for registration

An applicant for registration shall submit an application for registration to the director in a form prescribed by the director. The application must be in the name of an individual and signed by the applicant under penalty of perjury and must state or contain:

- (1) The name of the applicant and the address of the applicant's principal place of business;
- (2) The name of the applicant's business or employer, if applicable;

- (3) Any business or occupation engaged in by the applicant for the five years next preceding the date of submission of the application;
- (4) A description of the applicant's:
 - (a) Formal training as an athlete agent;
 - (b) Practical experience as an athlete agent; and
 - (c) Educational background relating to the applicant's activities as an athlete agent;
- (5) The names and addresses of three individuals not related to the applicant who are willing to serve as references;
- (6) The name, sport, and last known team for each individual for whom the applicant provided services as an athlete agent during the five years next preceding the date of submission of the application;
- (7) The names and addresses of all persons who are:
 - (a) With respect to the athlete agent's business if it is not a corporation, the partners, officers, associates, or profit-sharers; and
 - (b) With respect to a corporation employing the athlete agent, the officers, directors, and any shareholder of the corporation with a five percent or greater interest;
- (8) Whether the applicant or any other person named under subdivision (7) of this section has been convicted of a crime that if committed in this state would be a felony or other crime involving moral turpitude, and a description of the crime;
- (9) Whether there has been any administrative or judicial determination that the applicant or any other person named under subdivision (7) of this section has made a false, misleading, deceptive, or **fraudulent** representation;
- (10) Any instance in which the prior conduct of the applicant or any other person named under subdivision (7) of this section resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student athlete or educational institution;
- (11) Any sanction, suspension, or disciplinary action taken against the applicant or any other person named under subdivision (7) of this section arising out of occupational or professional conduct; and
- (12) Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew the registration or licensure of the applicant or any other person named under subdivision (7) of this section as an athlete agent in any state.

§ 436.230. Certificate of registration, issuance

1. Except as otherwise provided in subsection 2 of this section, the director shall issue a certificate of registration to an individual who complies with section 436.227.
2. The director may refuse to issue a certificate of registration if the director determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to serve as an athlete agent. In making the determination, the director may consider whether the applicant has:
 - (1) Been convicted of a crime that if committed in this state would be a felony or other crime involving moral turpitude;
 - (2) Made a materially false, misleading, deceptive, or **fraudulent** representation as an athlete agent or in the application;
 - (3) Engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;
 - (4) Engaged in conduct prohibited by section 436.254;
 - (5) Had a registration or licensure as an athlete agent suspended, revoked, or denied or been refused renewal of registration or licensure in any state;
 - (6) Engaged in conduct or failed to engage 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.
3. In making a determination under subsection 3 of this section, 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.
4. 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 must be signed by the applicant under penalty of perjury under section 575.040, RSMo, and shall contain current information on all matters required in an original registration.

5. A certificate of registration or a renewal of a registration is valid for two years.

§ 436.233. Revocation, suspension, or refusal to renew, certificates of registration—complaints

1. The director may revoke, suspend, or refuse to renew any certificate of registration required under this chapter for one or any combination of causes stated in subsection 2 of this section. The director shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of the applicant's right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.
2. The director may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration required by this chapter or any person who has failed to renew or has surrendered the person's certificate of registration for any one or any combination of the following causes:
 - (1) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties under this chapter, for any offense an essential element of which is **fraud**, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;
 - (2) Use of **fraud**, deception, misrepresentation or bribery in securing any certificate of registration under this chapter;
 - (3) Misconduct, **fraud**, misrepresentation, dishonesty, unethical conduct or unprofessional conduct in the performance of the functions regulated by this chapter including but not limited to the following:
 - (a) Obtaining or attempting to obtain any fee, charge, tuition, or other compensation by **fraud**, deception, or misrepresentation;
 - (b) Attempting directly or indirectly by way of intimidation, coercion or deception to obtain consultation;
 - (c) Failure to comply with any subpoena or subpoena duces tecum from the director;

- (d) Failing to inform the director of the athlete agent's current residence and business address;
 - (4) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted under this chapter;
 - (5) Impersonation of any person holding a certificate of registration or allowing any person to use his or her certificate of registration;
 - (6) Violation of the drug laws or rules and regulations of this state, any other state, or the federal government;
 - (7) Knowingly making, or causing to be made, or aiding, or abetting in the making of, a false statement in any birth or other certificate or document executed in connection with the transaction;
 - (8) Soliciting patronage in person, by agents, by representatives, or by any other means or manner, under the person's own name or under the name of another person or concern, actual or pretended in such a manner as to confuse, deceive, or mislead the public;
 - (9) A pattern of personal use or consumption of any controlled substance unless it is prescribed, dispensed or administered by a physician who is authorized by law to do so.
3. After the filing of such complaint before the administrative hearing commission, the proceedings shall be conducted in accordance with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing commission that the grounds provided in subsection 2 of this section for disciplinary action are met the director may singly or in combination warn, censure, or place the person named in the complaint on probation on such terms and conditions as the director deems appropriate for a period not to exceed six months, or may suspend the person's certificate of registration period not to exceed one year, or restrict or limit the person's certificate of registration for an indefinite period of time, or revoke the person's certificate of registration.
4. In any order of revocation, the director may provide that the person may not apply for reinstatement of the person's certificate of registration for a period of time ranging from two to seven years following the date of the order of revocation. All stay orders shall toll this time period.

§ 436.236. Temporary certificate of registration

The director may issue a temporary certificate of registration valid for sixty days while an application for registration or renewal is pending.

§ 436.239. Application for registration or renewal, fees—promulgation of rules

1. An application for registration or renewal of registration shall be accompanied by a fee which shall be determined by the director and established by rule. All fees payable under the provisions of this section shall be collected by the division of professional registration and transmitted to the department of revenue for deposit in the state treasury to the credit of the fund to be known as the “Athlete Agent Fund” which is hereby established. The provisions of section 33.080, RSMo, to the contrary notwithstanding, money in the athlete agent fund shall not be transferred and placed to the credit of general revenue until the amount in the athlete agent fund at the end of the biennium exceeds two times the amount of the appropriations from such fund for the preceding fiscal year or, if the director allows renewal of registration less frequently than yearly, then three times the appropriations from such fund for the preceding fiscal year; provided that no amount from such fund may be transferred to the credit of general revenue earlier than August 28, 2006. The amount if any which may be transferred to the credit of general revenue after August 28, 2006, is that amount in the athlete agent fund which exceeds the appropriate multiple of the appropriations from such fund for the preceding fiscal year.
2. The director may promulgate rules to authorize and file athlete agent documents as that term is defined in section 536.010, RSMo. Any rule promulgated under the authority in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly under chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2003, shall be invalid and void.

§ 436.242. Agency contracts, record—contents—notice—copies

1. An agency contract must be in a record signed by the parties.
2. An agency contract must state or 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 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.
3. An agency contract shall 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) BOTH YOU AND YOUR ATHLETE AGENT ARE REQUIRED TO TELL YOUR ATHLETIC DIRECTOR, IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER ENTERING INTO AN AGENCY CONTRACT; AND
(3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THE CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.”
4. An agency contract that does not conform to this section is voidable by the student athlete.
5. The athlete agent shall give a copy of the signed agency contract to the student athlete at the time of signing.

§ 436.245. Notice of contract to athletic director

1. 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 writing 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.

2. 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 in writing 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.

§ 436.248. Cancellation of contract—waiver of right—consideration

1. A student athlete may cancel an agency contract by giving notice in writing to the athlete agent of the cancellation within fourteen days after the contract is signed.
2. A student athlete may not waive the right to cancel an agency contract.
3. If a student athlete cancels an agency contract within fourteen days of signing the contract, the student athlete is not required to pay any consideration under the contract or to return any consideration received from the agent to induce the student athlete to enter into the contract.

§ 436.251. Retention of records

1. 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) Any agency contract entered into by the athlete agent; and
 - (3) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student athlete.
2. Records required by subsection 1 of this section to be retained are open to inspection by the director during normal business hours.

§ 436.254. Inducement to student athletes to enter into contracts

1. An athlete agent may not do any of the following with the intent to induce a student athlete to enter into an agency contract:
 - (1) Give any 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 any individual other than the student athlete or another registered athlete agent.
2. An athlete agent may not intentionally:
 - (1) Initiate contact with a student athlete unless registered under sections 436.215 to 436.272;
 - (2) Refuse or willfully fail to retain or permit inspection of the records required by section 436.251;
 - (3) Violate section 436.224 by failing to register;
 - (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 prior to the student athlete's signing an agency contract for a particular sport that the signing by the student athlete may make the student athlete ineligible to participate as a student athlete in that sport.

§ 436.257. Violation of provisions, class B misdemeanor

The commission of any act prohibited by section 436.254 by an athlete agent is a class B misdemeanor.

§ 436.260. Educational institutions, rights of action against agents or student athletes

1. An educational institution has a right of action against an athlete agent or a former student athlete for damages caused by a violation of sections 436.215 to 436.272. In an action under this section, the court may award to the prevailing party costs and reasonable attorney's fees.
2. Damages of an educational institution under subsection 1 of this section include losses and expenses incurred because as a result of the activities of an athlete agent or former student athlete the educational institution was injured by a violation of sections 436.215 to 436.272 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.
3. A right of action under 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.

4. Any liability of the athlete agent or the former student athlete under this section is several and not joint.
5. Sections 436.215 to 436.272 do not restrict rights, remedies, or defenses of any person under law or equity.

§ 436.263. Violations of provisions, class A misdemeanor

Any person who violates any provisions of sections 436.215 to 436.269 is guilty of a class A misdemeanor.

§ 436.266. Promotion of uniformity of the law

In applying and construing sections 436.215 to 436.272, consideration must be given to the need to promote uniformity of the law with respect to the subject matter of sections 436.215 to 436.272 among states that enact it.

§ 436.272. Transfer of collected moneys

Any moneys collected by the director under section 436.263 shall immediately be transferred to the department of revenue for deposit in the state treasury to the credit of general revenue.

MONTANA

Mont. Code Ann. § 37-76-101 to § 37-76-123 (2005)

§ 37-76-101. Short title.

This chapter may be cited as the “Uniform Athlete Agents Act”.

§ 37-76-102. Definitions.

For the purposes of this chapter, the following definitions apply:

(1) “Agency contract” means an agreement in which a student-athlete authorizes a person to negotiate or solicit a professional sports services contract or an endorsement contract on behalf of the student-athlete.

(2) (a) “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.

(b) The term does not include a spouse, parent, sibling, grandparent, or legal guardian of the student-athlete or an individual acting solely on behalf of a professional sports team or professional sports organization.

(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) “Department” means the department of labor and industry provided for in 2-15-1701.

(6) “Endorsement contract” means an agreement under which a student-athlete is employed or receives consideration from another party

based on the value to the other party that the student-athlete may have because of publicity, reputation, following, or fame obtained because of the student-athlete's athletic ability or performance.

(7) "Intercollegiate sport" means a sport played at the collegiate level with eligibility requirements for participation by a student-athlete established by a national association for the promotion or regulation of collegiate athletics.

(8) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental entity, or any other legal or commercial entity.

(9) "Professional sports services contract" means an agreement under which an individual is employed as or agrees to render services as a player on a professional sports team, as a member of a professional sports organization, or as a professional athlete.

(10) "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.

(11) "Registration" means registration as an athlete agent pursuant to this chapter.

(12) "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.

(13) "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.

§ 37-76-103. Service of process—subpoenas.

- (1) By acting as an athlete agent in this state, a nonresident individual appoints the secretary of state as the individual's agent for service of process in any civil action in this state related to the individual's actions as an athlete agent in this state.
- (2) The department may issue subpoenas for any material that is relevant to the administration of this chapter.

§ 37-76-104. Athlete agents—registration required—void contracts.

- (1) Except as provided in subsection (2), an individual may not act as an athlete agent in this state without holding a certificate of registration issued under 37-76-106 or 37-76-108.
- (2) Before being issued a certificate of registration, an individual may act as an athlete agent in this state for all purposes except signing an agency contract if:
 - (a) a student-athlete or another person acting on behalf of the student-athlete initiates communication with the individual; and
 - (b) within 7 days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in this state.
- (3) An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract.

§ 37-76-105. Registration as athlete agent—form—requirements.

- (1) An applicant shall submit an application for registration to the department in a form prescribed by the department. The application must be in the name of an individual and, except as provided in subsection (2), signed or otherwise authenticated by the applicant under penalty of perjury. The application must contain:
 - (a) the name of the applicant and the address of the applicant's principal place of business;
 - (b) the name of the applicant's business or employer, if applicable;
 - (c) any business or occupation engaged in by the applicant for the 5 years preceding the date of submission of the application;
 - (d) 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;
 - (e) the names and addresses of three individuals not related to the applicant who are willing to serve as references;
 - (f) the name, sport, and last-known team for each individual for whom the applicant acted as an athlete agent during the 5 years preceding the date of submission of the application;

- (g) if the applicant's business is other than a corporation, the names and addresses of all persons who are partners, members, officers, managers, or associates or who share profits of the business;
 - (h) if the applicant's business is a corporation, the names of any officers, directors, and any shareholder of the corporation having an interest of 5% or greater;
 - (i) whether the applicant or any person named pursuant to subsections (1)(g) and (1)(h) has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony and must identify the crime;
 - (j) whether there has been any administrative or judicial determination that the applicant or any person named pursuant to subsections (1)(g) and (1)(h) has made a false, misleading, deceptive, or **fraudulent** representation;
 - (k) any instance in which the conduct of the applicant or any person named pursuant to subsections (1)(g) and (1)(h) resulted in the imposition of a sanction, suspension, or declaration of ineligibility for a student-athlete or educational institution to participate in an interscholastic or intercollegiate athletic event;
 - (l) any sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to subsections (1)(g) and (1)(h) arising out of occupational or professional conduct; and
 - (m) whether there has been any denial of an application for, suspension or revocation of, or refusal to renew the registration or licensure of the applicant or any person named pursuant to subsections (1)(g) and (1)(h) as an athlete agent in any state.
- (2) An individual who has submitted an application for and holds a certificate of registration or licensure as an athlete agent in another state may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed by subsection (1). The department shall accept the application and the certificate from the other state as an application for registration in this state if the application to the other state:
- (a) was submitted in the other state within 6 months preceding the submission of the application in this state and the applicant certifies that the information contained in the application is current;
 - (b) contains information substantially similar to or more comprehensive than that required in an application submitted in this state; and
 - (c) was signed by the applicant under penalty of perjury.

§ 37-76-106. Certificate of registration—issuance or denial—renewal.

- (1) Except as provided in subsection (2), the department shall issue a certificate of registration to an individual who complies with 37-76-105(1) or whose application has been accepted under 37-76-105(2).
- (2) The department may refuse to issue a certificate of registration if the department determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the department may consider whether the applicant has:
 - (a) been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony;
 - (b) made a materially false, misleading, deceptive, or **fraudulent** representation in the application or as an athlete agent;
 - (c) engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;
 - (d) engaged in conduct prohibited by 37-76-117;
 - (e) had a registration or license as an athlete agent suspended, revoked, or denied or been refused renewal of registration or licensure as an athlete agent in any state;
 - (f) 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
 - (g) engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty, or integrity.
- (3) In making a determination under subsection (2), the department shall consider:
 - (a) how recently the conduct occurred;
 - (b) the nature of the conduct and the context in which it occurred; and
 - (c) any other relevant conduct of the applicant.
- (4) An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the department. 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.
- (5) 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 (4), may file a copy of the application for renewal and a valid certificate of

registration or licensure from the other state. The department 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:

- (a) was submitted in the other state within 6 months preceding the filing in this state and the applicant certifies the information contained in the application for renewal is current;
 - (b) contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this state; and
 - (c) was signed by the applicant under penalty of perjury.
- (6) A certificate of registration or a renewal of a registration is valid for 2 years.

§ 37-76-107. Suspension, revocation, or refusal to renew registration.

- (1) The department may suspend, revoke, or refuse to renew a registration for conduct that would have justified denial of registration under 37-76-106(2).
- (2) The department may deny, suspend, revoke, or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing.

§ 37-76-108. Temporary registration.

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

§ 37-76-109. Registration and renewal fees.

- (1) An application for registration or renewal of registration must be accompanied by a fee.
- (2) All fees and money received by the department must be deposited in the state special revenue fund in an account for use by the department in performing the duties required by this chapter.

§ 37-76-110 through § 37-76-112 reserved.

§ 37-76-113. Required form of contract.

- (1) An agency contract must be in a record and signed or otherwise authenticated by the parties.
- (2) An agency contract must contain:
 - (a) 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;
 - (b) the name of any person not listed in the athlete agent's application for registration or renewal of registration who will be compensated because the student-athlete signed the agency contract;
 - (c) a description of any expenses that the student-athlete agrees to reimburse;
 - (d) a description of the services to be provided to the student-athlete;
 - (e) the duration of the contract; and
 - (f) the date of execution.
- (3) 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, WITHIN 72
HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH
YOU AND YOUR ATHLETE AGENT SHALL NOTIFY YOUR
ATHLETIC DIRECTOR; AND
(3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS
AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT
MAY NOT REINSTATE YOUR ELIGIBILITY.”**
- (4) 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.
- (5) The athlete agent shall give a record of the signed or otherwise authenticated agency contract to the student-athlete at the time of execution.

§ 37-76-114. Notice to educational institution.

- (1) Within 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 athlete agent has reasonable grounds to believe the student-athlete intends to enroll.
- (2) Within 72 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 the student-athlete has entered into an agency contract.

§ 37-76-115. Student-athlete's right to cancel.

- (1) A student-athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within 14 days after the contract is signed.
- (2) A student-athlete may not waive the right to cancel an agency contract.
- (3) If a student-athlete cancels 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.

§ 37-76-116. Required records.

- (1) An athlete agent shall retain the following records for a period of 5 years:
 - (a) the name and address of each individual represented by the athlete agent;
 - (b) any agency contract entered into by the athlete agent; and
 - (c) any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract.
- (2) Records required to be retained by subsection (1) must be open to inspection by the department during normal business hours.

§ 37-76-117. Prohibited conduct.

- (1) An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, may not:
 - (a) give any materially false or misleading information or make a materially false promise or representation;
 - (b) furnish anything of value to a student-athlete before the student-athlete enters into the agency contract; or
 - (c) furnish anything of value to any individual other than the student-athlete or another registered athlete agent.
- (2) An athlete agent may not intentionally:
 - (a) initiate contact with a student-athlete unless registered under this chapter;
 - (b) refuse or fail to retain or permit inspection of the records required to be retained by 37-76-116;
 - (c) fail to register when required by 37-76-104;
 - (d) provide materially false or misleading information in an application for registration or renewal of registration;
 - (e) predate or postdate an agency contract; or
 - (f) fail to notify a student-athlete before the student-athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate as a student-athlete in that sport.

§ 37-76-118. Criminal penalties.

An athlete agent who violates the provisions of 37-76-117 is guilty of a misdemeanor and may be imprisoned for a period not to exceed 1 year and may be fined up to \$5,000, or both.

§ 37-76-119. Civil remedies.

- (1) 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 under this section, the court may award to the prevailing party costs and reasonable attorney fees.
- (2) Damages of an educational institution under subsection (1) include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student-athlete, 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 a national organization or athletic conference.

- (3) A right of action under this section does not accrue until the educational institution discovers or by the exercise of reasonable diligence should have discovered the violation by the athlete agent or former student-athlete.
- (4) Any liability of the athlete agent or the former student-athlete under this section is several and not joint.
- (5) This chapter is not intended to restrict any other rights, remedies, or defenses that a person may otherwise have under law or equity.

§ 37-76-120. Administrative penalty.

The department may assess a civil penalty against an athlete agent not to exceed \$25,000 for a violation of this chapter.

§ 37-76-121. Uniformity of application and construction.

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to the subject matter of this chapter among the states adopting provisions similar to Montana's Uniform Athlete Agents Act.

§ 37-76-122. Electronic signatures.

The provisions of this chapter governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of electronic records or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act, Public Law 106-229, 114 Stat. 464.

§ 37-76-123. Rulemaking authority.

The department may establish rules to administer and enforce this chapter.

NEVADA

Nev. Rev. Stat. Ann. § 398.400 to § 398.496 (LexisNexis 2002 & Supp. 2005)

§ 398.400. Short title.

The provisions of NRS 398.400 to 398.620, inclusive, may be cited as the Uniform Athletes' Agents Act.

§ 398.402. Applicability of provisions to person who sells or offers to sell services athlete's agent.

1. The provisions of NRS 398.400 to 398.620, inclusive, apply to a person who sells or offers to sell his services as an athlete's agent if:
 - (a) The offer is made in this state; or
 - (b) The offer is accepted in this state.
2. For the purpose of this section, an offer is made in this state, whether or not either party is present in this state, if the offer:
 - (a) Originates in this state; or
 - (b) Is directed by the offeror to a destination in this state and received where it is directed, or at a post office in this state if the offer is mailed.
3. For the purpose of this section, an offer is accepted in this state if the acceptance:
 - (a) Is communicated to the offeror in this state; and
 - (b) Has not previously been communicated to the offeror, orally or in writing, outside this state.

Acceptance is communicated to the offeror in this state, whether or not either party is present in this state, if the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received where it is directed, or at any post office in this state if the acceptance is mailed.

§ 398.403. Confidentiality of information obtained in connection with application or investigation; exceptions; effect on privilege.

1. Except as otherwise provided in subsections 2 and 3, the following information and documents do not constitute public information and are confidential:
 - (a) Information or documents obtained by the Secretary of State in connection with an investigation conducted pursuant to NRS 398.600 concerning possible violations of NRS 398.400 to 398.620, inclusive; and
 - (b) Information or documents filed with the Secretary of State in connection with an application for registration filed pursuant to NRS 398.400 to 398.620, inclusive, which constitute commercial or financial information, or business practices, of a person for which that person is entitled to and has asserted a claim of privilege or confidentiality authorized by law.
2. The Secretary of State may submit any information or evidence obtained in connection with an investigation conducted pursuant to NRS 398.600 to the Attorney General or appropriate district attorney for the purpose of prosecuting a criminal action pursuant to NRS 398.400 to 398.620, inclusive.
3. The Secretary of State may disclose any information obtained in connection with an investigation conducted pursuant to NRS 398.600 to any other governmental agency if the disclosure is provided for the purpose of a civil, administrative or criminal investigation or proceeding and the receiving agency represents in writing that, under applicable law, protections exist to preserve the integrity, confidentiality and security of the information.
4. The provisions of NRS 398.400 to 398.620, inclusive, do not create any privilege and do not diminish any privilege existing pursuant to common law, a specific statute or regulation, or otherwise.

§ 398.404. Definitions.

As used in NRS 398.400 to 398.620, inclusive, unless the context otherwise requires, the words and terms defined in NRS 398.408 to 398.446, inclusive, have the meanings ascribed to them in those sections.

§ 398.408. “Athlete’s agent” defined.

“Athlete’s agent” means a natural person who enters into a contract of agency with a student athlete or, directly or indirectly, recruits or solicits a student athlete to enter into such a contract. The term includes a natural person who represents to the public that he is an athlete’s agent. The term does not include a spouse, parent, sibling, grandparent or guardian of the student athlete or a natural person acting solely on behalf of a professional sports team or sports organization.

§ 398.412. “Athletic director” defined.

“Athletic director” means a natural person responsible for administering the overall athletic program of an institution or, if an institution has separately administered athletic programs for male students and female students, the athletic program for males or for females, as appropriate.

§ 398.416. “Contract for endorsement” defined.

“Contract for endorsement” means an agreement under which a student athlete is employed to use, or receives consideration for using, 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.

§ 398.420. “Contract for professional sports services” defined.

“Contract for professional sports services” means an agreement under which a natural person 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.

§ 398.424. “Contract of agency” defined.

“Contract of agency” means an agreement in which a student athlete authorizes a person to negotiate or solicit on his behalf a contract for endorsement or a contract for professional sports services.

§ 398.428. “Intercollegiate sport” defined.

“Intercollegiate sport” means a sport played at the collegiate level for which the requirements of eligibility for participation by a student athlete are established by a national association for the promotion or regulation of collegiate athletics.

§ 398.432. “Person” defined.

“Person” includes a government and a governmental subdivision, agency or instrumentality.

§ 398.436. “Record” defined.

“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.

§ 398.440. “Registration” defined.

“Registration” means registration as an athlete’s agent pursuant to NRS 398.400 to 398.620, inclusive.

§ 398.444. “State” defined.

“State” includes the District of Columbia, the United States Virgin Islands and any territory or insular possession subject to the jurisdiction of the United States.

§ 398.446. “Student athlete” defined.

“Student athlete” means a natural person who engages in, is eligible to engage in or may be eligible in the future to engage in any intercollegiate sport. For the purposes of a particular sport, the term does not include a person who is permanently ineligible to participate in that sport.

§ 398.448. Registration required to act as athlete's agent; limited exception; contract of agency void if in violation of section.

1. Except as otherwise provided in subsection 2, a person shall not act as an athlete's agent in this state without holding a certificate of registration under NRS 398.460 or 398.468.
2. Before being issued a certificate of registration, a person may act as an athlete's agent in this state for all purposes except signing a contract of agency if:
 - (a) A student athlete or another person acting on his behalf initiates communication with the person so acting; and
 - (b) Within 7 days after an initial act as an athlete's agent, the person so acting submits an application for registration.
3. A contract of agency resulting from conduct in violation of this section is void, and the athlete's agent shall return any consideration received under the contract.

§ 398.452. Submission of application for registration to secretary of state; application is public record; required contents and disclosures of application.

An applicant for registration shall submit an application to the secretary of state in a form prescribed by him. The application must be accompanied by the appropriate fee established by the secretary of state pursuant to NRS 398.472. An application filed pursuant to this section is a public record. The application must be in the name of a natural person and, except as otherwise provided in NRS 398.456, be signed or otherwise authenticated by the applicant under penalty of perjury and state or contain:

1. The name of the applicant and the address of his principal place of business;
2. The name of the applicant's business or employer, if applicable;
3. Any business or occupation engaged in by the applicant for the 5 years next preceding the date of submission of the application;
4. A description of the applicant's:
 - (a) Formal training as an athlete's agent;
 - (b) Practical experience as an athlete's agent; and
 - (c) Educational background relating to his activities as an athlete's agent;

5. The names and addresses of three natural persons not related to the applicant who are willing to serve as references;
6. The name, sport and last known team for each person for whom the applicant acted as an athlete's agent during the 5 years next preceding the date of submission of the application;
7. The names and addresses of all persons who are:
 - (a) With respect to the athlete's agent's business if it is not a corporation, the partners, members, officers, managers, associates or sharers of profits of the business; and
 - (b) With respect to a corporation employing the athlete's agent, the officers, directors and shareholders having an interest of 5 percent or more;
8. Whether the applicant or any person named pursuant to subsection 7 has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony, and identify the crime;
9. Whether there has been any administrative or judicial determination that the applicant or any person named pursuant to subsection 7 has made a false, misleading, deceptive or **fraudulent** representation;
10. Any instance in which the conduct of the applicant or any person named pursuant to subsection 7 resulted in the imposition of a sanction, suspension or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student athlete or an institution;
11. Any sanction, suspension or disciplinary action taken against the applicant or any person named pursuant to subsection 7 arising out of occupational or professional conduct; and
12. Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any person named pursuant to subsection 7 as an athlete's agent in any state.

§ 398.456. Submission of application by person who holds registration or licensure in another state.

A natural person who has submitted an application for, and holds a certificate of, registration or licensure as an athlete's agent in another state may submit a copy of the application and certificate instead of submitting an application in the form prescribed under NRS 398.452. The copy of the application and certificate must be accompanied by the appropriate fee established by the secretary of state pursuant to NRS 398.472. The secretary

of state shall accept the copy of the application and certificate from the other state as an application for registration in this state if the application to the other state:

1. Was submitted to the other state within 6 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.

§ 398.460. Issuance of certificate of registration; grounds for denial by secretary of state.

1. Except as otherwise provided in subsection 2, the Secretary of State shall issue a certificate of registration to a natural person who complies with NRS 398.452 or whose application has been accepted under NRS 398.456.
2. The Secretary of State may refuse to issue a certificate of registration if he determines that the applicant has engaged in conduct that has a significant adverse effect on his fitness to act as an athlete's agent. In making this determination, the Secretary of State may consider whether the applicant has:
 - (a) Been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony relating to his fitness to act as an athlete's agent;
 - (b) Made a materially false, misleading, deceptive or **fraudulent** representation in his application or as an athlete's agent;
 - (c) Engaged in conduct that would disqualify him from serving in a fiduciary capacity;
 - (d) Engaged in conduct prohibited by NRS 398.496;
 - (e) Had registration or licensure as an athlete's agent suspended, revoked or denied, or been refused renewal of registration or licensure as an athlete's agent, in any state;
 - (f) Engaged in conduct whose consequence 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 an institution; or

- (g) Engaged in conduct that significantly adversely reflects on his credibility, honesty or integrity.
3. In making a determination pursuant to subsection 2, the Secretary of State shall consider:
 - (a) How recently the conduct occurred;
 - (b) The nature of the conduct and the context in which it occurred; and
 - (c) Any other relevant conduct of the applicant.

§ 398.464. Renewal of registration; period for which initial certificate and renewal are valid.

1. An athlete's agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the secretary of state. The application must be accompanied by the appropriate fee established by the secretary of state pursuant to NRS 398.472. 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 for an original registration.
2. A natural person who has submitted an application for renewal of registration or licensure in another state, instead of submitting an application for renewal in the form prescribed pursuant to subsection 1, may file a copy of the application and a valid certificate of registration or licensure from the other state. The copy of the application and certificate must be accompanied by the appropriate fee established by the secretary of state pursuant to NRS 398.472. The secretary of state shall accept the copy of the application and certificate from the other state as an application for renewal in this state if the application to the other state:
 - (a) Was submitted in the other state within 6 months next preceding the filing in this state and the applicant certifies that the information contained in the application is current;
 - (b) Contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this state; and
 - (c) Was signed by the applicant under penalty of perjury.
3. A certificate of registration or a renewal of registration is valid for 2 years.

§ 398.468. Grounds for suspension, revocation or refusal to renew registration; issuance of temporary certificate of registration authorized.

1. The secretary of state may suspend, revoke or refuse to renew a registration for conduct that would have justified denial of registration under subsection 2 of NRS 398.460.
2. The secretary of state may issue a temporary certificate of registration while an application for registration or renewal of registration is pending.

§ 398.472. Adoption of regulations establishing fees; authority of Secretary of State to adopt other regulations.

1. The Secretary of State shall adopt regulations establishing fees for:
 - (a) An initial application for registration;
 - (b) An application for registration based upon a certificate of registration or licensure issued by another state;
 - (c) An application for renewal of registration; and
 - (d) An application for renewal of registration based upon an application for renewal of registration or licensure submitted in another state.
2. The fees established pursuant to subsection 1 must be sufficient to cover the costs of administration of the Uniform Athletes' Agents Act.
3. The Secretary of State may adopt:
 - (a) Regulations further defining such words and terms as are necessary for an understanding of the provisions of NRS 398.400 to 398.620, inclusive, and any regulations adopted pursuant thereto; and
 - (b) Such other regulations as he determines necessary to carry out the provisions of NRS 398.400 to 398.620, inclusive.

§ 398.476. Secretary of state appointed agent for service of process for nonresident athlete's agent; issuance of subpoenas by secretary of state.

1. By acting as an athlete's agent in this state, a nonresident natural person appoints the secretary of state as his agent for service of process in any civil action in this state related to his acting as an athlete's agent in this state.
2. The secretary of state may issue subpoenas for any material that is relevant to the administration of the Uniform Athletes' Agents Act.

§ 398.480. Retention and inspection of records; duty to file updated information.

1. An athlete's agent shall retain the following records for 5 years:
 - (a) The name and address of each natural person he represents;
 - (b) Any contract of agency into which he enters; and
 - (c) Any direct cost he incurs in recruiting or soliciting a student athlete to enter into a contract of agency.
2. Records required by this section to be retained:
 - (a) Are open to inspection by the Secretary of State during normal business hours; and
 - (b) May be maintained in any form of data storage if they are readily accessible to the Secretary of State.
3. If the information contained in a document filed with the Secretary of State as part of an application for registration is or becomes inaccurate or incomplete, the registered person shall file correcting information within 30 days.

§ 398.482. Required contents of contract; contract void if does not contain required warning; athlete's agent required to give record of contract to student athlete.

1. A contract of agency must be in a record signed or otherwise authenticated by the parties.
2. The contract must state or contain:
 - (a) The amount of and method of calculating the consideration to be paid by the student athlete for services to be provided by the athlete's agent under the contract and any other consideration the agent has received or will receive from any other source for entering into the contract or providing the services;
 - (b) The name of any person not listed in the agent's application for registration or renewal of registration who will be compensated because the student athlete signed the contract;
 - (c) A description of any expenses that the student athlete agrees to reimburse;
 - (d) A description of the services to be provided to the student athlete;
 - (e) The duration of the contract; and
 - (f) The date of execution.

3. The contract must contain, in close proximity to the signature of the student athlete, a conspicuous notice in boldface capital letters.

WARNING TO STUDENT ATHLETE

IF YOU SIGN THIS CONTRACT:

- (1) YOU WILL LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT ATHLETE IN YOUR SPORT;
 - (2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE'S AGENT MUST NOTIFY HIM; AND
 - (3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.
4. A contract of agency which does not contain the required warning is void and unenforceable. The student athlete need not pay any consideration under it or return any consideration received from the athlete's agent to induce him to enter into it.
 5. The athlete's agent shall give a record of the signed or otherwise authenticated contract to the student athlete at the time of execution.

§ 398.484. Athlete's agent and student athlete required to give notice of entering into contract.

1. Within 72 hours after entering into a contract of agency or before the next scheduled athletic event in which the student athlete may participate, whichever occurs first, the athlete's agent shall give notice, in a record, of the existence of the contract to the athletic director of the institution at which the student athlete is enrolled or the athlete's agent has reasonable ground to believe the student athlete intends to enroll.
2. Within 72 hours after entering into a contract of agency 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 institution at which he is enrolled that he has entered into the contract.

§ 398.488. Cancellation of contract by student athlete.

1. A student athlete may cancel a contract of agency by giving notice of the cancellation to the athlete's agent in a record within 14 days after the contract is signed.
2. A student athlete may not waive the right to cancel a contract of agency.
3. If a student athlete cancels a contract of agency, he is not required to pay any consideration under the contract or to return any consideration received from the athlete's agent to induce him to enter into the contract.

§ 398.490. Liability of athlete's agent or student athlete to institution for damages caused by violation; award of attorney's fees and costs; accrual of right of action; joint and several liability; section does not restrict other rights and remedies.

1. An institution has a right of action against an athlete's agent or a former student athlete for damages caused by a violation of the Uniform Athletes' Agents Act. In such an action, the court may award to the prevailing party costs and reasonable attorney's fees.
2. Damages of an institution pursuant to subsection 1 include losses and expenses incurred because, as a result of the conduct of the athlete's agent or former student athlete, the educational institution was injured by a violation of the Uniform Athletes' Agent Act 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.
3. A right of action pursuant to this section does not accrue until the institution discovers or by the exercise of reasonable diligence should have discovered the violation by the athlete's agent or former student athlete.
4. Any liability of an athlete's agent or former student athlete pursuant to this section is joint and several.
5. This section does not restrict the rights, remedies or defenses of any person under other law or in equity.

§ 398.492. Liability of person other than athlete's agent or student athlete to institution for damages caused by violation; award of attorney's fees and costs.

1. A person, other than an athlete's agent or student athlete, who causes a student athlete or an institution to violate a rule of the national collegiate athletic association to which the institution is a member, or aids in any such violation, is liable to the institution for damages as provided in subsection 2 if:
 - (a) The person knew or reasonably should have known that a rule was violated or would be violated; or
 - (b) The violation of the rule is a contributing cause of:
 - (1) Disciplinary action, including loss of eligibility, taken by the institution against a student athlete; or
 - (2) Disciplinary action taken by the national collegiate athletic association against the institution or a student athlete.
2. Damages that may be awarded against a person who causes a violation of a rule of a national collegiate athletic association, or aids in any such violation, include:
 - (a) Costs incurred by the institution relating to any investigation or hearing conducted by the national collegiate athletic association concerning the violation; and
 - (b) Lost revenues to the institution from:
 - (1) Lost contracts for televising athletic events;
 - (2) A decline in ticket sales;
 - (3) Being prohibited from participating in postseason athletic events and tournaments; and
 - (4) Other discernible opportunities through which the institution would have realized revenue if the rule had not been violated.
3. If an institution prevails in an action brought pursuant to this section, it is entitled to an award of reasonable attorney's fees and costs.

§ 398.496. Prohibition on certain conduct by athlete's agent; penalties for violation of Act, regulations and certain orders.

1. An athlete's agent shall not, with the intent to induce a student athlete to enter into any contract:

- (a) Give any materially false or misleading information or make a materially false promise or representation;
 - (b) Furnish anything of value to the student athlete before the student athlete enters into the contract; or
 - (c) Furnish anything of value to a natural person other than the student athlete or another registered athlete's agent.
2. An athlete's agent shall not intentionally:
- (a) Initiate communication, direct or indirect, with a student athlete to recruit or solicit him to enter into a contract of agency, unless the agent is registered pursuant to NRS 398.400 to 398.620, inclusive;
 - (b) Refuse or fail to retain or permit inspection of records required to be retained pursuant to NRS 398.480;
 - (c) Fail to register when required pursuant to NRS 398.448;
 - (d) Include materially false or misleading information in an application for registration or renewal of registration;
 - (e) Predate or postdate a contract of agency; or
 - (f) Fail to notify a student athlete, before he signs or otherwise authenticates a contract of agency for a particular sport, that the signing or authentication will make him ineligible to participate as a student athlete in that sport.
3. A person who willfully violates:
- (a) A provision of NRS 398.400 to 398.620, inclusive;
 - (b) A regulation adopted by the Secretary of State pursuant to NRS 398.400 to 398.620, inclusive; or
 - (c) An order denying, suspending or revoking the effectiveness of a registration, or an order to cease and desist, issued by the Secretary of State pursuant to NRS 398.400 to 398.620, inclusive, is guilty of a gross misdemeanor and shall be punished by imprisonment in the county jail for not more than 1 year, or by a fine of not more than \$25,000, or by both fine and imprisonment. In addition to any other penalty, the court shall order the person to pay restitution.
4. A person who violates:
- (a) A regulation adopted by the Secretary of State pursuant to NRS 398.400 to 398.620, inclusive; or
 - (b) An order denying, suspending or revoking the effectiveness of a registration, or an order to cease and desist, issued by the Secretary of State pursuant to NRS 398.400 to 398.620, inclusive,

without knowledge of the regulation or order, is guilty of a misdemeanor and shall be punished by a fine of not more than \$25,000.

5. The provisions of NRS 398.400 to 398.620, inclusive, do not limit the power of the State of Nevada to punish a person for conduct which constitutes a crime pursuant to any other law.

NEW HAMPSHIRE

N.H. Rev. Stat. Ann. § 332-J:1 to § 332-J:15 (LexisNexis Supp. 2006)

§ 332-J:1. Definitions.

In this chapter:

I. "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.

II. "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, or grandparent, or guardian of the student-athlete or an individual acting solely on behalf of a professional sports team or professional sports organization.

III. "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.

IV. "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.

V. "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.

VI. "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.

VII. "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.

VIII. "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.

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

X. "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.

XI. "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.

§ 332-J:2. Service of Process.

By acting as an athlete agent, a nonresident individual appoints the New Hampshire secretary of state as the individual's agent for service of process in any civil action in this state related to the individual's acting as an athlete agent.

§ 332-J:3. Registration Required.

- I. Except as otherwise provided in this section, an individual shall not act as an athlete agent in this state without holding a certificate of registration pursuant to RSA 332-J:4.
- II. Before being issued a certificate of registration, an individual may act as an athlete agent in this state for all purposes except signing an agency contract, if:
 - (a) A student-athlete or another person acting on behalf of the student-athlete initiates communication with the individual; and
 - (b) Within 7 days after an initial act as an athlete agent, the individual submits an application for registration pursuant to RSA 332-J:4 as an athlete agent in this state.
- III. An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract.

§ 332-J:4. Registration Procedure.

- I. An applicant for registration shall submit an application for registration to the secretary of state in a form prescribed by the secretary of state. An application filed under this section shall be a public record for the purposes of RSA 91-A. The application shall be in the name of an individual and, except as otherwise provided in this section, signed or otherwise authenticated by the applicant under penalty of perjury, and shall contain:
 - (a) The name of the applicant and the address of the applicant's principal place of business.
 - (b) The name of the applicant's business or employer, if applicable.
 - (c) Any business or occupation engaged in by the applicant for the 5 years preceding the date of submission of the application.
 - (d) A description of the applicant's formal training as an athlete agent, practical experience as an athlete agent, and educational background relating to the applicant's activities as an athlete agent.
 - (e) The names and addresses of 3 individuals not related to the applicant who are willing to serve as references.
 - (f) The name, sport, and last known team for each individual for whom the applicant acted as an athlete agent during the 5 years preceding the date of submission of the application.
 - (g) The names and addresses of all persons who are, with respect to the athlete agent's business if it is not a corporation, the partners, members, officers, managers, associates, or profit-sharers of the business, and with respect to a corporation employing the athlete agent, the officers, directors, and any shareholder of the corporation having an interest of 5 percent or greater.
 - (h) Whether the applicant or any person named pursuant to this section has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony, and, if so, identify the crime.
 - (i) Whether there has been any administrative or judicial determination that the applicant or any person named pursuant to this section has made a false, misleading, deceptive, or **fraudulent** representation.
 - (j) Any instance in which the conduct of the applicant or any person named pursuant to this section resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate

in an interscholastic or intercollegiate athletic event at a student-athlete or educational institution.

- (k) Any sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to this section arising out of occupational or professional conduct.
 - (l) Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any person named pursuant to this section as an athlete agent in any state.
- II. (a) An individual who holds a certificate of registration or licensure as an athlete agent in another state may submit a verified copy of such certificate or license in lieu of submitting an application in the form prescribed pursuant to this chapter. The secretary of state shall accept the certificate or license from the other state as an application for registration in this state.
- o (b) An individual who has submitted an application for registration or licensure as an athlete-agent in another state may submit a verified copy of such application to the secretary of state who shall accept such application as an application for registration in this state; provided, that the application to the other state:
- (1) Was submitted in the other state within 6 months of the date the individual sought to obtain registration 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.

§ 332-J:5. Issuance, Denial, or Renewal of Certificate of Registration.

- I. Except as otherwise provided in this section, the secretary of state shall issue a certificate of registration to an individual who complies with RSA 332-J:4, I, or whose application has been accepted under RSA 332-J:4, II.
- II. The secretary of state may refuse to issue a certificate of registration if the secretary of state determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the secretary of state may consider whether the applicant has:

- (a) Been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony.
 - (b) Made a materially false, misleading, deceptive, or **fraudulent** representation in the application or as an athlete agent.
 - (c) Engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity.
 - (d) Engaged in conduct prohibited by RSA 332-J:13.
 - (e) 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.
 - (f) 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.
 - (g) Engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty, or integrity.
- III. In making a determination under paragraph II, the secretary of state shall consider:
- (a) How recently the conduct occurred;
 - (b) The nature of the conduct and the context in which it occurred; and
 - (c) Any other relevant conduct of the applicant.
- IV. An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the secretary of state. A renewal application filed under this section shall be a public record for the purposes of RSA 91-A. 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.
- V. An individual who has submitted an application for renewal of registration or evidence of licensure in another state in lieu of submitting an application for renewal in the form prescribed pursuant to paragraph IV, may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. The secretary of state 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:
- (a) Was submitted in the other state within 6 months next preceding the filing in this state and the applicant certifies the information contained in the application for renewal is current;

- (b) Contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this state; and
- (c) Was signed by the applicant under penalty of perjury.

VI. A certificate of registration or a renewal of a registration shall be valid for 2 years.

§ 332-J:6. Suspension, Revocation, or Refusal to Renew Registration.

The secretary of state may suspend, revoke, or refuse to renew a registration for conduct that would have justified denial of registration under RSA 332-J:5, II only after proper notice and an opportunity for a hearing.

§ 332-J:7. Temporary Registration.

The secretary of state may issue a temporary certificate of registration while an application for registration or renewal of registration is being processed; provided, that any temporary certificate of registration issued under this section shall be conspicuously marked as a temporary, and shall be valid for not more than [sic] 10 days from the date of issuance.

§ 332-J:8. Fees.

An application for registration or renewal of registration shall be accompanied by a fee payable to the secretary of state in the following amount:

- I. \$100 for an initial application for registration.
- II. \$100 for an application for registration based upon a certificate of registration or licensure issued by another state.
- III. \$50 for an application for renewal of registration.
- IV. \$50 for an application for renewal of registration based upon an application for renewal of registration or licensure submitted in another state.

§ 332-J:9. Required Form of Contract.

- I. An agency contract shall be in a record, signed or otherwise authenticated by the parties.
- II. An agency contract shall state or contain:
 - (a) 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;

- (b) 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;
- (c) A description of any expenses that the student-athlete agrees to reimburse;
- (d) A description of the services to be provided to the student-athlete;
- (e) The duration of the contract; and
- (f) The date of execution.

III. An agency contract shall 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, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND
- (3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.

IV. 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.

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

§ 332-J:10. Notice to Educational Institution.

I. Within 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 of the existence of the contract to the athletic director of the educational institution at which the student-athlete is enrolled, or the educational

institution at which the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.

- II. Within 72 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.

§ 332-J:11. Student-Athlete's Right to Cancel.

- I. A student-athlete may cancel an agency contract by giving written notice of the cancellation to the athlete agent within 14 days after the contract is signed.
- II. A student-athlete may not waive the right to cancel an agency contract.
- III. If a student-athlete cancels 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.

§ 332-J:12. Required Records.

- I. An athlete agent shall retain the following records for a period of 5 years:
 - (a) The name and address of each individual represented by the athlete agent.
 - (b) Any agency contract entered into by the athlete agent.
 - (c) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract.
- II. Records required to be retained under this section are open to public inspection during normal business hours.

§ 332-J:13. Prohibited Conduct; Penalties.

- I. An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, shall not:
 - (a) Give any materially false or misleading information or make a materially false promise or representation.
 - (b) Furnish anything of value to a student-athlete before the student-athlete enters into the agency contract.

- (c) Furnish anything of value to any individual other than the student-athlete or another registered athlete agent.
- II. An athlete agent shall not:
 - (a) Initiate contact with a student-athlete unless registered under this chapter.
 - (b) Refuse or fail to retain or permit inspection of the records required to be retained by RSA 332-J:12.
 - (c) Fail to register when required by RSA 332-J:3.
 - (d) Provide materially false or misleading information in an application for registration or renewal of registration.
 - (e) Predate or postdate an agency contract.
 - (f) Fail to notify a student-athlete before the student-athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate as a student-athlete in that sport.
- III. (a) An athlete agent who violates any provision of paragraph I is guilty of a class B felony.
 - (b) An athlete agent who violates any provision of paragraph II is guilty of a class A misdemeanor.

§ 332-J:14. Civil Remedies.

- I An educational institution has a right of action against an athlete agent or a former student-athlete for damages caused by a violation of RSA 332- J:13. In an action under this section, the court may award to the prevailing party costs and reasonable attorney's fees.
- II. Damages of an educational institution under paragraph I include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student-athlete, the educational institution was injured by a violation of RSA 332-J:13 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.
- III. A right of action under 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.
- IV. Any liability of the athlete agent or the former student-athlete under this section is several and not joint.

V. This chapter does not restrict rights, remedies, or defenses of any person under law or equity.

§ 332-J:15. Administrative Penalty.

Notwithstanding RSA 651:2, IV, the secretary of state may assess a civil penalty against an athlete agent not to exceed \$25,000 for a violation of this chapter.

NEW YORK

N.Y. Gen. Bus. § 899 to § 899-p (McKinney Supp. 2006)

§ 899. Short title

This article shall be known and may be cited as the “uniform athlete agents act”.

§ 899-a. Definitions

As used in this article the following terms shall have the following meanings:

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. Such term includes an individual who represents to the public that the individual is an athlete agent. This 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.

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. “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.

6. "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 which promotes or regulates such sport and is recognized by the educational institution that said student-athlete attends.

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

8. "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. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

10. "Registration" means registration as an athlete agent pursuant to this article.

11. "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.

12. "Student-athlete" means an individual who engages in, is eligible to engage in, may be eligible in the future to engage in or was eligible in the past thirty days to engage in any intercollegiate or interscholastic sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, such individual shall not be considered a student-athlete thirty days after losing his or her eligibility for purposes of that sport.

§ 899-b. Service of process; subpoenas

1. By acting as an athlete agent in this state, a nonresident individual appoints the secretary of state as the individual's agent for service of process in any civil action in this state related to the individual's acting as an athlete agent in this state.
2. The secretary of state may issue subpoenas for any material that is relevant to the administration of this article.

§ 899-c. Athlete agents; registration required; void contracts

1. Except as otherwise provided in subdivision two of this section, an individual shall not act as an athlete agent in this state without holding

a certificate of registration issued pursuant to section eight hundred ninety-nine-e of this article,

2. Before being issued a certificate of registration, an individual may act as an athlete agent in this state for all purposes except signing an agency contract, if:
 - (a) a student-athlete or another person acting on behalf of the student-athlete initiates communication with such individual; and
 - (b) within seven days after an initial act as an athlete agent, such individual submits an application for registration as an athlete agent in this state.
3. An agency contract resulting from conduct in violation of this section shall be void. In the event a student-athlete voids an agency contract, the student-athlete shall not be required to pay any consideration under such contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract, and the athlete agent shall be required to return any consideration received pursuant to such voided agency contract.
4. An agency contract shall be void and unenforceable unless it is in writing.

§ 899-d. Registration as athlete agent; form; requirements

1. An applicant for registration shall submit an application therefor to the secretary of state in such form as shall be prescribed by the secretary of state. An application filed pursuant to this section shall be a public record. The application shall be in the name of an individual and, except as otherwise provided in subdivision two of this section, signed or otherwise authenticated by the applicant under penalty of perjury, and state or contain:
 - (a) the name of the applicant and the address of the applicant's principal place of business;
 - (b) the name of the applicant's business or employer, if applicable;
 - (c) any business or occupation engaged in by the applicant for the five years next preceding the date of submission of the application;
 - (d) 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;

- (e) the names and addresses of three individuals not related to the applicant who are willing to serve as references;
 - (f) 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;
 - (g) the names and addresses of all persons who are:
 - (i) with respect to the athlete agent's business if it is not a corporation, the partners, members, officers, managers, associates or profit-sharers having an interest of five percent or greater of the business; and
 - (ii) 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;
 - (h) whether the applicant or any person named pursuant to paragraph (g) of this subdivision has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony, and identify the crime;
 - (i) whether there has been any administrative or judicial determination that the applicant or any person named pursuant to paragraph (g) of this subdivision has made a false, misleading, deceptive or **fraudulent** representation;
 - (j) any instance in which the conduct of the applicant or any person named pursuant to paragraph (g) of this subdivision resulted in the imposition of a sanction, suspension or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or educational institution;
 - (k) any sanction, suspension or disciplinary action taken against the applicant or any person named pursuant to paragraph (g) of this subdivision by a governmental or quasi-governmental licensing entity or adjudicatory process arising out of occupational or professional conduct; and
 - (l) whether there has been any denial of an application for, suspension or revocation of, or refusal to renew the registration or licensure of the applicant or any person named pursuant to paragraph (g) of this subdivision as an athlete agent in any state.
2. An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another state, may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to subdivision one of this section. The secretary of state shall accept the appli-

cation and the certificate from the other state as an application for registration in this state if the application to the other state:

- (a) 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;
- (b) contains information substantially similar to or more comprehensive than that required in an application submitted in this state; and
- (c) was signed by the applicant under penalty of perjury.

§ 899-e. Certificate of registration; issuance or denial; renewal

1. Except as otherwise provided in subdivision two of this section, the secretary of state shall issue a certificate of registration to an individual who complies with subdivision one of section eight hundred ninety-nine-d of this article or whose application has been accepted under subdivision two of section eight hundred ninety-nine-d of this article.
2. The secretary of state may refuse to issue a certificate of registration if the secretary of state determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the secretary of state may consider whether the applicant has:
 - (a) been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony;
 - (b) made a materially false, misleading, deceptive or **fraudulent** representation in the application or as an athlete agent;
 - (c) engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;
 - (d) engaged in conduct prohibited by section eight hundred ninety-nine-l of this article;
 - (e) 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;
 - (f) 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
 - (g) engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty or integrity.

3. In making a determination under subdivision two of this section, the secretary of state shall consider the factors set forth in article twenty-three of the correction law.
4. An athlete agent may apply to renew a registration by submitting an application for renewal in such form as shall be prescribed by the secretary of state. An application filed pursuant to this section shall be a public record. 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.
5. 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 subdivision four of this section, may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. The secretary of state 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:
 - (a) 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;
 - (b) contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this state; and
 - (c) was signed by the applicant under penalty of perjury.
6. A certificate of registration or a renewal of a registration shall be valid for two years.

§ 899-f. Suspension, revocation or refusal to renew registration

1. The secretary of state may suspend, revoke or refuse to renew a registration for conduct that would have justified denial of registration under subdivision two of section eight hundred ninety-nine-e of this article.
2. The secretary of state may deny, suspend, revoke or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing as provided pursuant to provisions of the state administrative procedure act.

§ 899-g. Registration and renewal fees

An application for registration or renewal of registration shall be accompanied by a fee in the following amount:

1. three hundred dollars for an initial application for registration; or
2. one hundred fifty dollars for an application for renewal of registration.

§ 899-h. Required form of contract

1. An agency contract shall be in a record, signed or otherwise authenticated by the parties.
2. An agency contract shall state or contain:
 - (a) 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;
 - (b) 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;
 - (c) a description of any expenses that the student-athlete agrees to reimburse;
 - (d) a description of the services to be provided to the student-athlete;
 - (e) the duration of the contract; and
 - (f) the date of execution.
3. An agency contract shall 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, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND**
- (3) **YOU MAY CANCEL THIS CONTRACT WITHIN 5 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.**

4. 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 shall not be required to pay any consideration under such contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.
5. The athlete agent shall give a record of the signed or otherwise authenticated agency contract to the student-athlete at the time of execution.

§ 899-i. Notice to educational institution

1. 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.
2. 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.

§ 899-j. Student-athlete's right to cancel

1. A student-athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within five days after the contract is signed.
2. A student-athlete may not waive the right to cancel an agency contract.
3. If a student-athlete cancels an agency contract, the student-athlete shall not be required to pay any consideration under such contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

§ 899-k. Required records

1. An athlete agent shall retain the following records for a period of five years:
 - (a) the name and address of each individual represented by the athlete agent;

- (b) any agency contract entered into by the athlete agent; and
 - (c) any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract.
2. The records required to be retained pursuant to subdivision one of this section shall be open to inspection by the secretary of state during normal business hours.

§ 899-I. Prohibited conduct

1. An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, shall not:
- (a) give any materially false or misleading information or make a materially false promise or representation;
 - (b) furnish anything of value to a student-athlete before the student-athlete enters into the agency contract;
 - (c) furnish anything of value to any other individual or another registered athlete agent before the student-athlete enters into the agency contract; or
 - (d) fail to notify the student-athlete before he or she signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate in that sport.

The prohibitions contained within this subdivision shall not prohibit an athlete agent from sponsoring or furnishing equipment to an amateur athletic team through a government or not-for-profit entity registered with the secretary of state pursuant to section one hundred seventy-two of the executive law or entities exempt from article seven-A of the executive law pursuant to section one hundred seventy-two-a of the executive law, provided that sponsorship or equipment will not result in a student-athlete being rendered ineligible to participate in intercollegiate athletics.

2. An athlete agent shall not willfully:
- (a) initiate contact with a student-athlete unless registered pursuant to this article;
 - (b) refuse or fail to retain or permit inspection of the records required to be retained by section eight hundred ninety-nine-k of this article;
 - (c) fail to register when required by section eight hundred ninety-nine-c of this article;

- (d) provide materially false or misleading information in an application for registration or renewal of registration; or
- (e) predate or postdate an agency contract.

§ 899-m. Criminal sanctions

1. Except as provided in subdivision two of this section, an athlete agent who violates the provisions of section eight hundred ninety-nine-l of this article shall be guilty of a class A misdemeanor.
2. An athlete agent who violates: (a) the provisions of section eight hundred ninety-nine-l of this article, while such athlete agent's certificate of registration is suspended, after the secretary of state has revoked or refused to renew such certificate of registration pursuant to section eight hundred ninety-nine-f of this article, or after the secretary of state has refused to issue a certificate of registration pursuant to section eight hundred ninety-nine-e of this article shall be guilty of a class E felony; or (b) paragraph (c) of subdivision two of section eight hundred ninety-nine-l, when he or she has been previously convicted within the last five years of having violated such paragraph shall be guilty of a class E felony.

§ 899-n. Civil remedies

1. An educational institution shall have a right of action against an athlete agent for damages caused by any violation of this article. In an action brought pursuant to this section, the court may award reasonable attorney's fees to a prevailing plaintiff.
2. The damages of an educational institution pursuant to subdivision one of this section shall include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student-athlete, the educational institution was injured by a violation of this article 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.
3. A right of action under this section shall 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.

4. This article shall not be deemed to restrict rights, remedies or defenses of any person under law or equity.

§ 899-o. Administrative penalty

The secretary of state may assess a civil penalty against an athlete agent not to exceed twenty-five thousand dollars for a violation of section eight hundred ninety-nine-l of this article.

§ 899-p. Uniformity of application and construction

In applying and construing this article in this state, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

NORTH CAROLINA

N.C. Gen. Stat. § 78C-85 to § 78C-105 (2005)

§ 78C-85. Title.

This Article may be cited as the “Uniform Athlete Agents Act”.

§ 78C-86. Definitions.

The following definitions apply in this Article:

(1) **Agency contract.**—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.**—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, or guardian of the student-athlete or an individual acting solely on behalf of a professional sports team or professional sports organization.

(3) **Athletic director.**—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.**—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) **Endorsement contract.**—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.

(6) **Intercollegiate sport.**—A sport played at the collegiate level for which eligibility requirements for participation by a student-athlete are

established by a national association for the promotion or regulation of collegiate athletics.

(7) Person.—An individual, company, corporation, partnership, association, or any other legal or commercial entity.

(8) Professional-sports-services contract.—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) Record.—Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(10) Registration.—A certificate issued by the Secretary of State evidencing that a person has satisfied the requirements of an athlete agent pursuant to this Article.

(11) Student-athlete.—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.

§ 78C-87. Service of process; subpoenas.

- (a) By acting as an athlete agent in this State, a nonresident individual appoints the Secretary of State as the individual's agent for service of process in any civil action in this State related to the individual's acting as an athlete agent in this State.
- (b) The Secretary of State may issue subpoenas for any material that is relevant to the administration of this article.

§ 78C-88. Athlete agents; registration required; exceptions; void contracts.

- (a) Except as otherwise provided in this section, an individual may not act as an athlete agent in this State without holding a certificate of registration under G.S. 78C-90 or G.S. 78C-92.
- (b) Before being issued a certificate of registration, an individual may act as an athlete agent in this State for all purposes except signing an agency contract if:
 - (i) a student-athlete or another person acting on behalf of the student-athlete initiates communication with the individual; and

- (ii) within seven days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in this State.
- (c) A North Carolina licensed and resident attorney may act as an athlete agent in this State for all purposes without registering pursuant to this section if the attorney neither advertises directly for, nor solicits, any student-athlete by representing to any person that the attorney has special experience or qualifications with regard to representing student-athletes and represents no more than two student-athletes.
- (d) An agency contract resulting from conduct in violation of this section is void, and the athlete agent shall return any consideration received under the contract.

§ 78C-89. Registration as athlete agent; form; requirements.

- (a) An individual seeking registration as an athlete agent shall submit an application for registration to the Secretary of State in a form prescribed by the Secretary of State. The application must be in the name of an individual and, except as otherwise provided in subsection
- (b) of this section, signed or otherwise authenticated by the applicant under penalty of perjury and must state or contain the following:
 - (1) The name of the applicant and the address of the applicant's principal place of business.
 - (2) The name of the applicant's business or employer, if applicable.
 - (3) Any business or occupation engaged in by the applicant for the five years immediately preceding the date of submission of the application.
 - (4) A description of the applicant's:
 - a. Formal training as an athlete agent.
 - b. Practical experience as an athlete agent.
 - c. Educational background relating to the applicant's activities as an athlete agent.
 - (5) The names and addresses of three individuals not related to the applicant who are willing to serve as references.
 - (6) The name, sport, and last known team for each individual for whom the applicant acted as an athlete agent during the five years immediately preceding the date of submission of the application.
 - (7) The names and addresses of all persons who are:

- a. With respect to the athlete agent's business if it is not a corporation, the partners, members, officers, managers, associates, or profit-sharers of the business.
 - 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 (5%) or greater.
 - (8) Whether the applicant or any person named under subdivision (7) of this subsection has been convicted of a crime that, if committed in this State, would be a crime involving moral turpitude or a felony and identify the crime.
 - (9) Whether there has been any administrative or judicial determination that the applicant or any person named under subdivision (7) of this subsection has made a false, misleading, deceptive, or **fraudulent** representation.
 - (10) Any instance in which the conduct of the applicant or any person named under subdivision (7) of this subsection resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or educational institution.
 - (11) Any sanction, suspension, or disciplinary action taken against the applicant or any person named under subdivision (7) of this subsection arising out of occupational or professional conduct.
 - (12) Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew the registration or licensure of the applicant or any person named under subdivision (7) of this subsection as an athlete agent in any state.
- (b) An individual who has submitted an application for registration or licensure as an athlete agent in another state or who holds a certificate of registration or licensure as an athlete agent in another state may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to subsection (a) of this section. The Secretary of State shall accept the application and the certificate from the other state as an application for registration in this State if the application to the other state satisfied all of the following criteria:
- (1) Was submitted in the other state within six months immediately 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.
- (3) Was signed by the applicant under penalty of perjury.
- (c) An application filed under this section is a “public record” within the meaning of Chapter 132 of the General Statutes.

§ 78C-90. Certificate of registration; issuance or denial; renewal.

- (a) Except as otherwise provided in subsection (b) of this section, the Secretary of State shall issue a certificate of registration to an individual who complies with G.S. 78C-89(a) or whose application has been accepted under G.S. 78C-89(b).
- (b) The Secretary of State may refuse to issue a certificate of registration if the Secretary of State determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant’s fitness to act as an athlete agent. In making the determination, the Secretary of State may consider whether the applicant has:
 - (1) Been convicted of a crime that, if committed in this State, would be a crime involving moral turpitude or a felony.
 - (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 G.S. 78C-98
 - (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.
 - (7) Engaged in conduct that significantly adversely reflects on the applicant’s credibility, honesty, or integrity.
- (c) In making a determination under subsection (b) of this section, the Secretary of State shall consider: (i) how recently the conduct occurred; (ii) the nature of the conduct and the context in which it occurred; and (iii) 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 Secretary of State. 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) 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) of this section, may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. The Secretary of State 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 satisfied the following:
 - (1) Was submitted in the other state within six months immediately 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.
 - (3) Was signed by the applicant under penalty of perjury.
- (f) A certificate of registration or a renewal of a registration is valid for one year.
- (g) An application filed under this section is a “public record” within the meaning of Chapter 132 of the General Statutes.

§ 78C-91. Suspension; revocation; refusal to renew registration.

- (a) The Secretary of State may suspend, revoke, or refuse to renew a registration for conduct that would have justified denial of registration under G.S. 78C-90(b).
- (b) The Secretary of State may deny, suspend, revoke, or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing in accordance with the Administrative Procedures Act pursuant to Article 3 of Chapter 150B of the General Statutes.

§ 78C-92. Temporary registration.

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

§ 78C-93. Registration; renewal of fees.

An application for registration or renewal of registration must be accompanied by a fee in the following amount:

- (1) Application for registration \$200.00
- (2) Application for registration based upon a certificate of registration or licensure issued by another state 200.00
- (3) Application for renewal of registration 200.00
- (4) Application for renewal of registration based upon an application for renewal of registration or licensure submitted in another state 200.00

§ 78C-94. Required form of contract.

- (a) An agency contract must be in a record, signed or otherwise authenticated by the parties.
- (b) An agency contract must state or contain the following:
 - (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.
 - (6) The date of execution.
- (c) An agency contract must contain, in close proximity to the signature of the student-athlete, a conspicuous notice in boldface type in capital letters stating:

WARNING TO STUDENT-ATHLETE

IF YOU SIGN THIS CONTRACT:

- (1) **YOU SHALL LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT-ATHLETE IN YOUR SPORT;**
- (2) **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;

- (3) YOU WAIVE YOUR ATTORNEY-CLIENT PRIVILEGE WITH RESPECT TO THIS CONTRACT AND CERTAIN INFORMATION RELATED TO IT; AND
 - (4) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT SHALL 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.
 - (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.
 - (f) The waiver of attorney-client privilege does not affect those privileges between client and attorney when the attorney is not an athlete agent.

§ 78C-95. Notice to educational institution.

- (a) Within 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 the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.
- (b) Within 72 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.

§ 78C-96. Student-athlete's right to cancel.

- (a) A student-athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within 14 days after the contract is signed.
- (b) A student-athlete may not waive the right to cancel an agency contract.

- (c) If a student-athlete cancels an agency contract, the student-athlete is not required to pay 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.

§ 78C-97. Required records; waiver of attorney-client privilege.

- (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) Any agency contract entered into by the athlete agent.
 - (3) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract.
- (b) Records required to be retained by subsection (a) of this section are open to inspection by the Secretary of State during normal business hours.
- (c) Where a student-athlete enters into an agency contract regulated under this Article, the student-athlete will be deemed to waive the attorney-client privilege with respect to records required to be retained by subsection (a) of this section, subject to G.S. 78C-94(f).

§ 78C-98. Prohibited conduct.

- (a) An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, shall not:
 - (1) Give any 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.
 - (3) Furnish anything of value to any individual other than the student-athlete or another registered athlete agent.
- (b) An athlete agent shall not intentionally:
 - (1) Initiate contact with a student-athlete unless the athlete agent is registered under this Article.
 - (2) Refuse or fail to retain or permit inspection of the records required to be retained by G.S. 78C-97.
 - (3) Fail to register as required by G.S. 78C-88.

- (4) Provide materially false or misleading information in an application for registration or renewal of registration.
- (5) Predate or postdate an agency contract.
- (6) Fail to notify a student-athlete before the student-athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication shall make the student-athlete ineligible to participate as a student-athlete in that sport.

§ 78C-99. Criminal penalties.

An athlete agent who violates any provision under G.S. 78C-98(a) is guilty of a Class I felony

§ 78C-100. Civil remedies.

- (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 Article. In an action under this section, the court may award costs and reasonable attorneys' fees to the prevailing party.
- (b) Damages suffered by an educational institution under subsection (a) of this section include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student-athlete, the educational institution was injured by a violation of this Article or was penalized, disqualified, or suspended from participation in athletics by:
 - (i) a national association for the promotion and regulation of athletics;
 - (ii) an athletic conference; or
 - (iii) reasonable self-imposed disciplinary action taken to mitigate sanctions likely to be imposed by an athletic organization.
- (c) A right of action under 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) Any liability of the athlete agent or the former student-athlete under this section is several and not joint.
- (e) This Article does not restrict rights, remedies, or defenses of any person under law or equity.

§ 78C-101. Administrative penalty.

The Secretary of State may assess a civil penalty against an athlete agent not to exceed twenty-five thousand dollars (\$25,000) for a violation of this Article.

§ 78C-102. Uniformity of application and construction.

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.

§ 78C-103. Electronic Signatures in Global and National Commerce Act.

The provisions of this Article governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of those records or signatures, conform to the requirements of section 102 of the Electronic Signatures in Global and National Commerce Act, Pub. L. 106-229, 114 Stat. 464 (2000), and supersede, modify, and limit the Electronic Signatures in Global and National Commerce Act.

§ 78C-104. Severability.

If any provision of this Article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are severable.

§ 78C-105. Rules.

The Secretary of State may, in accordance with Chapter 150B of the General Statutes, adopt rules necessary to carry out the provisions of this Article.

NORTH DAKOTA

N. D. Cent. Code § 9-15.1-01 to § 9-15.1-16 (Supp 2003)

§ 9-15.1-01. Definitions.

In this chapter, unless the context otherwise requires:

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 an agency contract with a student-athlete or recruits or solicits a student-athlete to enter 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.

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 between an athlete agent and a student-athlete to recruit or solicit the student-athlete to enter an agency contract.

5. "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.

6. "Intercollegiate sport" means a sport played at the collegiate level for which eligibility requirements for participation by a student-athlete are established by a national association for the promotion or regulation of collegiate athletics.

7. "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.

8. "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.

9. "Registration" means registration as an athlete agent under this chapter.

10. "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.

§ 9-15.1-02. Service of process—Subpoenas.

By acting as an athlete agent in this state, a nonresident individual appoints the secretary of state as the individual's agent for service of process in any civil action in this state related to the individual's acting as an athlete agent in this state. The secretary of state may issue subpoenas for any material that is relevant to the administration of this chapter.

§ 9-15.1-03. Athlete agents—Registration required—Void contracts.

1. Except as otherwise provided in subsection 2, an individual may not act as an athlete agent without holding a certificate of registration.
2. Before being issued a certificate of registration, an individual may act as an athlete agent for all purposes except signing an agency contract, if a student-athlete or another person acting on behalf of the student-athlete initiates communication with the individual and within seven days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent.
3. An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract.

§ 9-15.1-04. Registration as athlete agent.

1. An applicant for registration shall submit an application for registration to the secretary of state in a form prescribed by the secretary of state. The application must be in the name of an individual and, except

as otherwise provided in subsection 2, signed or otherwise authenticated by the applicant under penalty of perjury and state or contain:

- a. The name of the applicant and the address of the applicant's principal place of business.
- b. The name of the applicant's business or employer, if applicable.
- c. Any business or occupation engaged in by the applicant for the five years preceding the date of submission of the application.
- d. A description of the applicant's formal training as an athlete agent, practical experience as an athlete agent, and educational background relating to the applicant's activities as an athlete agent.
- e. The names and addresses of three individuals not related to the applicant who are willing to serve as references.
- f. The name, sport, and last-known team for each individual for whom the applicant acted as an athlete agent during the five years preceding the date of submission of the application.
- g. The names and addresses of all persons who are:
 - (1) With respect to the athlete agent's business if it is not a corporation, the name of the organization, the partners, members, officers, managers, associates, or profit-sharers of the business; and
 - (2) With respect to a corporation employing the athlete agent, the name of the organization, the officers, directors, and any shareholder of the corporation having an interest of five percent or greater.
- h. Whether the applicant or any person named under subdivision g has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony, and identify the crime.
- i. Whether there has been any administrative or judicial determination that the applicant or any person named under subdivision g has made a false, misleading, deceptive, or **fraudulent** representation.
- j. Any instance in which the conduct of the applicant or any person named under subdivision g resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or educational institution.

- k. Any sanction, suspension, or disciplinary action taken against the applicant or any person named under subdivision g arising out of occupational or professional conduct.
 - l. Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any person named under subdivision g as an athlete agent in any state.
2. An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another state may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed under subsection 1. The secretary of state shall accept the application and the certificate from the other state as an application for registration if the application to the other state:
- a. Was submitted in the other state within six months preceding the submission of the application in this state and the applicant certifies that the information contained in the application is current;
 - b. Contains information substantially similar to or more comprehensive than that required in an application submitted in this state; and
 - c. Was signed by the applicant under penalty of perjury.

§ 9-15.1-05. Certificate of registration—Issuance or denial—Renewal.

- 1. Except as otherwise provided in subsection 2, the secretary of state shall issue a certificate of registration to an individual who complies with subsection 1 of section 9-15.1-04 whose application has been accepted under subsection 2 of section 9-15.1-04.
- 2. The secretary of state may refuse to issue a certificate of registration if the secretary of state determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the secretary of state may consider whether the applicant has:
 - a. Been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony;
 - b. Made a materially false, misleading, deceptive, or **fraudulent** representation in the application or as an athlete agent;
 - c. Engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;
 - d. Engaged in conduct prohibited by section 9-15.1-13;

- e. 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;
 - f. 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
 - g. Engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty, or integrity.
3. In making a determination under subsection 2, the secretary of state shall consider how recently the conduct occurred, the nature of the conduct and the context in which it occurred, and any other relevant conduct of the applicant.
 4. An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the secretary of state. 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.
 5. 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 under subsection 4, may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. The secretary of state 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:
 - a. Was submitted in the other state within six months preceding the filing in this state and the applicant certifies the information contained in the application for renewal is current;
 - b. Contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this state; and
 - c. Was signed by the applicant under penalty of perjury.
 6. A certificate of registration or a renewal of a registration is valid for two years.

§ 9-15.1-06. Suspension, revocation, or refusal to renew registration.

The secretary of state may suspend, revoke, or refuse to renew a registration for conduct that would have justified denial of registration.

§ 9-15.1-07. Temporary registration.

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

§ 9-15.1-08. Registration and renewal fees.

An application for registration or renewal of registration must be accompanied by a fee in the following amount:

1. Two hundred fifty dollars for an initial application for registration.
2. Two hundred fifty dollars for an application for registration based upon a certificate of registration or licensure issued by another state.
3. One hundred fifty dollars for an application for renewal of registration.
4. One hundred fifty dollars for an application for renewal of registration based upon an application for renewal of registration or licensure submitted in another state.

§ 9-15.1-09. Required form of contract.

1. An agency contract must be in a record, signed or otherwise authenticated by the parties. An agency contract must state or contain:
 - a. 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 the contract or for providing the services;
 - b. 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;
 - c. A description of any expenses the student-athlete agrees to reimburse;
 - d. A description of the services to be provided to the student-athlete;
 - e. The duration of the contract; and
 - f. The date of execution.
2. 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, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTORS; AND
 - (3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.
3. 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 the contract.
 4. The athlete agent shall give a record of the signed or otherwise authenticated agency contract to the student-athlete at the time of execution.

§ 9-15.1-10. Notice to educational institution.

1. Within seventy-two hours after entering 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.
2. Within seventy-two hours after entering 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 the student-athlete has entered an agency contract.

§ 9-15.1-11. Student-athlete's right to cancel.

A student-athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within fourteen days after the contract is signed. A student-athlete may not waive the right to cancel an agency contract. If a student-athlete cancels 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.

§ 9-15.1-12. Required records.

1. An athlete agent shall retain the following records for a period of five years:
 - a. The name and address of each individual represented by the athlete agent;
 - b. Any agency contract entered by the athlete agent; and
 - c. Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter an agency contract.
2. Records required by subsection 1 to be retained are open to inspection by the secretary of state during normal business hours.

§ 9-15.1-13. Prohibited conduct.

1. An athlete agent, with the intent to induce a student-athlete to enter an agency contract, may not:
 - a. Give any materially false or misleading information or make a materially false promise or representation;
 - b. Furnish anything of value to a student-athlete before the student-athlete enters the agency contract; or
 - c. Furnish anything of value to any individual other than the student-athlete or another registered athlete agent.
2. An athlete agent may not intentionally:
 - a. Initiate contact with a student-athlete unless registered under this chapter;
 - b. Refuse or fail to retain or permit inspection of the records required to be retained by section 9-15.1-12;
 - c. Fail to register when required by section 9-15.1-03;
 - d. Provide materially false or misleading information in an application for registration or renewal of registration;
 - e. Predate or postdate an agency contract; or
 - f. Fail to notify a student-athlete before the student-athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate as a student-athlete in that sport.

§ 9-15.1-14. Penalty.

An athlete agent who violates section 9-15.1-13 is guilty of a class A misdemeanor.

§ 9-15.1-15. Civil remedies.

1. An educational institution has a cause of action against an athlete agent or a former student-athlete for damages caused by a violation of this chapter. In an action under this section, the court may award to the prevailing party costs and reasonable attorney's fees.
2. Damages of an educational institution under subsection 1 including losses and expense incurred because, as a result of the conduct of an athlete agent or former student-athlete, 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.
3. A cause of action under 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.
4. Any liability of the athlete agent or the former student-athlete under this section is several and not joint.
5. This chapter does not restrict rights, remedies, or defenses of any person under law or equity.

§ 9-15.1-16. Administrative penalty.

The secretary of state may assess a civil penalty against an athlete agent not to exceed twenty-five thousand dollars for a violation of this chapter.

OHIO

Chapter 4771: Athlete Agents

§ 4771.01 Athlete agent definitions.

- (A) “Agent contract” means any contract or agreement pursuant to which an athlete authorizes or empowers or agrees to authorize or empower at some later date an athlete agent to do any of the following:
- (1) Negotiate or solicit an agreement on behalf of the athlete with one or more professional sports teams for the employment of the athlete by a professional sports team;
 - (2) Negotiate or solicit an agreement on behalf of the athlete for the employment of the athlete as a professional athlete;
 - (3) Market, or enter an agreement to market, an athlete or an athlete’s reputation.
- (B) “Athlete agent” means any person who directly or indirectly recruits or solicits any athlete to enter into an agent contract or professional sports services contract, or who for a fee procures, offers, promises, or attempts to obtain employment for an athlete with a professional sports team, or as a professional athlete, or otherwise attempts to market an athlete or an athlete’s reputation. Athlete agent does not include either of the following:
- (1) A member of a student athlete’s immediate family;
 - (2) An attorney from whom an athlete seeks legal advice concerning a proposed professional sports services contract if the attorney does not represent the athlete in negotiating or soliciting the contract.
- (C) “Immediate family” means an individual’s spouse, child, parent, step-parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, first cousin, or the spouse or guardian of any of the individuals described in this division.
- (D) “Athlete” means either of the following:
- (1) A student enrolled in any educational institution or institution of higher education in this state, who participates, or is or may be

come eligible to participate, in any athletic sporting event, contest, exhibition, or program at the educational institution or institution of higher education;

- (2) A student who meets one of the following criteria:
 - (a) Resides in this state, is eligible to participate in an amateur athletic program, and has informed an educational institution or institution of higher education, in writing, of the student's intent to participate in that institution's amateur athletic program;
 - (b) Does not reside in this state but is eligible to participate in an amateur athletic program and has informed, in writing, an educational institution or institution of higher education in this state of the student's intent to participate in that institution's amateur athletic program.
- (E) "Institution of higher education" means a state university or college or a private nonprofit college or university located in this state that possesses a certificate of authorization issued by the Ohio board of regents pursuant to Chapter 1713. of the Revised Code.
- (F) "Professional sports services contract" means either of the following:
 - (1) Any contract or agreement pursuant to which an athlete is employed or agrees to render services as a player on a professional sports team or as a professional athlete;
 - (2) Any contract or agreement that provides for the present or future marketing of an athlete or athlete's reputation.
- (G) "State university or college" includes the state universities listed in section 3345.011 of the Revised Code, community colleges created pursuant to Chapter 3354. of the Revised Code, university branches created pursuant to Chapter 3355. of the Revised Code, technical colleges created pursuant to Chapter 3357. of the Revised Code, and state community colleges created pursuant to Chapter 3358. of the Revised Code.
- (H) "Educational institution" means any institution located in this state, public or private, that provides elementary or secondary education to students as its primary function.

Effective Date: 03-22-2001

§ 771.02 Athlete agent contract with athlete—requirements.

(A) No athlete agent shall enter into an agent contract with an athlete unless the agent complies with all of the following agent contract requirements:

(1) The agent contract is in writing on a form approved by the Ohio athletic commission and includes all agreements between the parties.

(2) The agent contract includes in boldface, twelve-point type, on the initial page of the agent contract, the following language:

“The athlete agent entering this agreement is registered to serve as an athlete agent with the Ohio athletic commission. Registration of an athlete agent under Chapter 4771. of the Revised Code does not imply approval by the commission of the terms and conditions of this contract or the competence of the athlete agent.”

(3) The agent contract includes the following language in boldface, twelve-point type, near the space provided for an athlete to sign or otherwise acknowledge agreement to the terms of the contract:

“Warning to the student athlete: When you sign this contract, you may immediately lose your eligibility to compete in any amateur or intercollegiate athletics. Accordingly, you must give written notice that you have entered into this contract to the athletic director or person of similar position at the educational institution or institution of higher education in which you are enrolled, or to which you have formally acknowledged your plans to attend, prior to the earlier of participating in or practicing for an officially sanctioned athletic competition or intercollegiate athletic event, or seventy-two hours after entering into this contract.

Do not sign this contract until you have read it and filled in any blank spaces. Under Ohio law, as a student athlete signing this contract, you have the right to rescind this contract for a period of up to ten days after the latest of the following occurrences:

- (a) The date the contract is signed;
- (b) The date the athletic director or person of similar position at the educational institution or institution of higher education in which you are enrolled, or have acknowledged plans to attend, receives notice of this contract; or

- (c) The last date you participate in an officially sanctioned athletic competition or intercollegiate athletic event if no notice of this contract is provided to the athletic director or person of similar position.

Despite cancellation of this contract, the educational institution, institution of higher education, or intercollegiate athletic association or conference to which your institution of higher education belongs may not restore your eligibility to participate in amateur or intercollegiate athletics. If you sign this contract prior to the last officially sanctioned athletic competition or intercollegiate athletic event you participate in and fail to notify your institution of this contract, your athletic team may be required to forfeit all games in which you participated after signing. Such action also may cause your athletic team to be declared ineligible for post-season play.”

- (4) The athlete agent agrees in the agent contract to provide written notice of the agent contract to the athletic director or person of similar position at the educational institution or institution of higher education in which the athlete is enrolled prior to the earlier of the time the athlete next participates in or practices for an officially sanctioned athletic competition or intercollegiate athletic event after entering that agent contract, or seventy-two hours after entering that agent contract.
- (5) All terms and conditions contained in the agent contract comply with state and federal law.
- (B) A provision in an agent contract that provides for the resolution of any controversy in connection with the contract by arbitration is void and unenforceable unless both of the following apply:
 - (1) The provision is contained in an agent contract between an athlete agent and an athlete for whom the athlete agent undertakes to secure employment.
 - (2) The provision is included in the agent contract pursuant to a rule, regulation, or contract of a bona fide labor union or organization that regulates the relations of its members with athlete agents.
- (C) An athlete and athlete agent who enter an agent contract each shall provide written notice of that agent contract to the athletic director or person of similar position at the educational institution or institution of higher education in which the athlete is enrolled prior to the earlier of the time the athlete next participates in or practices for an officially sanctioned athletic competition or intercollegiate athletic event after

entering that agent contract, or seventy-two hours after entering that agent contract.

Effective Date: 03-22-2001

§ 4771.03 Action on agent contract.

No athlete agent shall commence or maintain an action in any court in this state on the basis of any agent contract entered into in this state unless the contract complies with section 4771.02 of the Revised Code.

Effective Date: 06-14-1988

§ 4771.04 Status of agent contracts.

Any agent contract entered into in violation of this chapter shall be void and unenforceable. An agent contract entered into in this state or an agent contract entered into with an athlete who is enrolled in an educational institution or institution of higher education located in this state shall be governed by Ohio law.

Effective Date: 03-22-2001

§ 4771.05 Athletic commission duties.

The Ohio athletic commission, established under section 3773.33 of the Revised Code, shall do all of the following:

- (A) Review the application form of an applicant for registration as an athlete agent;
- (B) Issue and renew biennial certificates of registration for an athlete agent pursuant to this chapter;
- (C) Maintain records of every athlete agent registered in this state, including the agent's business and residential address, and the date and number of the agent's registration;
- (D) Establish an application form to be completed by an individual seeking registration as an athlete agent;
- (E) Establish a fee for the registration, and renewal of the registration, of an individual as an athlete agent in an amount necessary to generate sufficient funds to cover the cost of administering and enforcing this Chapter;
- (F) Adopt rules in accordance with Chapter 119. of the Revised Code to carry out the purposes of this chapter.

Effective Date: 03-22-2001

§ 4771.06 Certificate of registration required.

No person shall serve as an athlete agent in this state unless the person holds a current and valid certificate of registration as an athlete agent issued under section 4771.08 of the Revised Code, a temporary certificate issued under section 4771.08 of the Revised Code, or a temporary certificate of convenience issued under section 4771.09 of the Revised Code.

Effective Date: 03-22-2001

§ 4771.07 Applying for registration.

- (A) Each individual who desires to serve as an athlete agent within this state shall first file an application for registration with the Ohio athletic commission. The applicant shall apply using a form prescribed by the commission and shall provide all the following information:
- (1) The name and residential address of the applicant;
 - (2) The address of the primary location in which the applicant wishes to conduct business as an athlete agent;
 - (3) The type of business conducted or the occupation held by the applicant during the five years immediately preceding application;
 - (4) The location and evidence of a trust fund established in accordance with division (B) of section 4771.12 of the Revised Code and rules adopted by the commission;
 - (5) The name and address of all persons who have a financial interest in the business operation of the applicant, or who are compensated for the solicitation or recruitment of athletes on behalf of the applicant, except for salaried employees who receive no commission or bonus pursuant to any agent or professional sports services contract;
 - (6) Any other information deemed necessary by the commission.
- (B) The applicant shall submit with the application for registration an affidavit or certificate of completion describing all formal training or practical experience completed by the applicant in any of the following areas:
- (1) Contracts;
 - (2) Contract negotiations;

- (3) Complaint resolution;
- (4) Arbitration;
- (5) Dispute resolution.

An attorney admitted to practice law in this state shall submit with the application a certificate of good standing issued by the supreme court of Ohio in lieu of an affidavit or certificate otherwise required under this division.

- (C) An applicant shall submit with the application for registration an application fee in an amount determined by the commission pursuant to division (F) of section 4771.05 of the Revised Code and proof of one of the securities required under section 4771.11 of the Revised Code.
- (D) An athlete agent shall notify the commission of any change in business location or address during the period of application for registration or during the period of time the registration of the athlete agent is valid.

Effective Date: 03-22-2001

§ 4771.08 Issuing certificate of registration or temporary certificate.

- (A) Upon receipt of all the materials required for application for registration under section 4771.07 of the Revised Code, the Ohio athletic commission shall evaluate the information provided and issue a certificate of registration to the applicant, unless the commission finds that the applicant or an employee or representative of the applicant has committed any of the acts described in division (A) of section 4771.18 of the Revised Code.
- (B) The commission may issue a temporary certificate of registration, effective for a period of up to ninety days after the issuance of the temporary registration, to an athlete agent who is registered as an athlete agent in another state, or to a person who has not submitted all the material required under section 4771.07 of the Revised Code, but who the commission determines to have submitted sufficient material to warrant the issuance of a temporary certificate.
- (C) The registration of an athlete agent with the commission is valid for a period of two years after the date the certificate of registration is issued. An athlete agent shall file an application for the renewal of a registration with the commission at least thirty days prior to the expiration of the registration of the athlete agent. An application for renewal shall be accompanied by a renewal fee in an amount determined by the

commission pursuant to division (F) of section 4771.05 of the Revised Code.

- (D) Each certificate of registration issued by the commission to an athlete agent shall contain all the following information:
 - (1) The name of the athlete agent;
 - (2) The address of the primary location in which the athlete agent is authorized to conduct business as an athlete agent;
 - (3) A registration number for the athlete agent and the date of issuance of the registration.
- (E) No registration or certificate of registration is valid for any individual other than the athlete agent to whom it is issued.
- (F) The commission is not liable for the acts of an athlete agent who is registered with the commission.

Effective Date: 03-22-2001

§ 4771.09 Issuing certificate of convenience.

- (A) The Ohio athletic commission may issue an eligible person a certificate of convenience to conduct business as an athlete agent when a registered athlete agent is deceased, or declared incompetent or physically infirm by the judgment of a court of competent jurisdiction. The commission may issue a certificate of convenience upon either receiving approval to do so from a probate court or finding that the last will and testament of the athlete agent specifically authorizes the executor or administrator of estate to conduct the business of the athlete agent.
- (B) The following persons are eligible to obtain a certificate of convenience to conduct business on behalf of an athlete agent:
 - (1) The executor or administrator of the estate of the deceased athlete agent;
 - (2) The guardian of the estate of an athlete agent who has been declared incompetent or the conservator appointed to manage the estate of an athlete agent who has been declared physically infirm.
- (C) A certificate of convenience is valid for ninety days after the date it is issued. If the holder of a certificate of convenience applies for registration as an athlete agent, the commission may renew the certificate of convenience for a period of time the commission finds appropriate pending the commission's determination whether to issue a certificate

of registration as an athlete agent to the holder of the certificate of convenience.

Effective Date: 03-22-2001

§ 4771.10 Continuing education.

The commission may require each registered athlete agent to complete not more than six hours of continuing education during a biennial registration in programs to be determined or approved by the commission. If the commission imposes continuing education requirements on athlete agents, not less than two of the six hours of continuing education shall be devoted to ethics.

A continuing education program shall promote the ability of an athlete agent to serve as an athlete agent in an ethical and legal manner. A continuing education program may address laws and rules governing athlete agents and rules and policies established by an athletic conference or a collegiate athletic organization. An athlete agent also may obtain credit for continuing education by participating in or attending lectures, courses at institutions of higher education, seminars, or rule-making or disciplinary proceedings approved by the commission, or by teaching a subject that pertains to the profession of an athlete agent.

If the commission requires athlete agents to fulfill continuing education requirements under this section, the commission shall adopt rules to carry out the purposes of this section. The rules shall contain procedures by which the commission shall monitor an athlete agent's compliance with the continuing education requirements prior to renewal of an athlete agent's certificate of registration.

Effective Date: 03-22-2001

§ 4771.11 Proof of security.

(A) Prior to issuing a certificate of registration, the Ohio athletic commission shall require an athlete agent to submit proof of one of the following securities:

- (1) A surety bond in the amount of fifteen thousand dollars in favor of the state of Ohio for the benefit of any person who is injured by a violation of this chapter or rules adopted under this chapter;
- (2) A certificate of deposit in favor of, or a savings account assigned to, the state of Ohio for the benefit of any person that is injured

by a violation of this chapter or rules adopted under this chapter, in the amount of fifteen thousand dollars;

- (3) Certification from an insurance carrier indicating that the athlete agent has obtained professional malpractice insurance in an amount equal to, or greater than, fifty thousand dollars, or a lesser amount, as permitted by the commission.

An athlete agent shall present evidence of a bond, a certificate of deposit, an assigned savings account, or professional malpractice insurance in the manner prescribed by the commission.

- (B) The commission shall hold on deposit, as an agent of the state, any surety bond or other form of security deposited with the commission by an athlete agent. The commission shall hold the security in trust contingent on an athlete agent's compliance with all provisions of this chapter including the payment of all moneys owed to an athlete, group of athletes, educational institution, or institution of higher education, and the payment of all damages other than punitive damages due as the result of a misstatement, misrepresentation, **fraudulent** act, deceit, or unlawful or negligent act or omission by an athlete agent in the course of serving as an athlete agent, or by a representative or employee of an athlete agent when the representative or employee acted within the scope of the representative's or employee's authority. The commission may use funds held on deposit for an athlete agent to pay debts owed by an athlete agent as described in this division pursuant to a court or administrative order specifying the obligation of the athlete agent.
- (C) Nothing in this section shall be construed to limit the liability of an athlete agent to the amount of the surety bond, malpractice coverage, or other security held on deposit by the commission.
- (D) An athlete agent shall maintain the security required under this section. If an athlete agent fails to maintain the security as required under this section, the commission shall suspend the registration of the athlete agent until the athlete agent provides evidence of the bond, certificate of deposit, assigned savings account, or professional malpractice insurance, as required under this section.
- (E) The liability of the surety on a bond described in division (A) of this section shall not exceed the sum of fifteen thousand dollars in the aggregate for all persons who are injured by any and all violations of this chapter or rules adopted under this chapter.
- (F) A surety may cancel a bond described in division (A) of this section after mailing a written notice to the athlete agent and the commission stating that the bond cancels sixty days after that notice is mailed. The

liability of the surety for acts of the athlete agent continues during that sixty-day period. The cancellation notice does not absolve the surety from liability that accrues before the cancellation date but that is discovered after that date.

- (G) The commission shall return the surety bond or other form of security held by the commission under this section to the athlete agent submitting the bond or security, two years after the person ceases to serve as an athlete agent in this state.

Effective Date: 03-22-2001

§ 4771.12 Fess of agent.

- (A) Fees charged by an athlete agent for services provided to an athlete may be negotiated between the parties.
- (B) (1) Except as provided in division (B)(2) of this section, an athlete agent shall establish an interest-bearing trust fund or similar account in a depository approved by the Ohio athletic commission to be used for the deposit of all revenues received on behalf of an athlete. An athlete agent shall deposit any revenue received on behalf of an athlete in the interest-bearing trust fund or account. The athlete agent shall notify the commission of the address and location of the trust fund or account and the depository in which it is located.
 - (2) An athlete agent who is an attorney licensed to practice law in this state may deposit any revenue received on behalf of an athlete in a trust account already maintained by the agent attorney in a financial institution in this state for the deposit of revenue received on behalf of clients.
- (C) No athlete agent shall share fees with any person other than an employee of the athlete agent. If an athlete agent shares a fee with an employee, the athlete agent shall obtain written consent from the athlete prior to entering a fee agreement with the athlete. No athlete agent shall enter fee agreements that are prohibited under this chapter.
- (D) If an athlete agent collects a fee or expense from an athlete as consideration for obtaining employment for the athlete, and the athlete agent fails to procure such employment, the agent shall retain only the following portion of the fee or expense:
 - (1) The cost of reasonable expenses incurred by the athlete agent during the course of representing the athlete in efforts to obtain employment for the athlete;

- (2) A negotiated fee in connection with instances where the athlete receives a bonus or some compensation for signing a professional sports services contract.
- (E) Nothing in this section shall be construed to limit the authority of the Ohio supreme court to establish or regulate fees for activities considered to be the practice of law.

Effective Date: 03-22-2001

§ 4771.13 Investments of athletes.

No athlete agent shall act on behalf of an athlete as a “dealer” or “investment advisor,” as defined in section 1707.01 of the Revised Code, unless the athlete agent complies with Chapter 1707. of the Revised Code.

An athlete agent shall disclose to an athlete and the Ohio athletic commission any ownership interest the athlete agent has in an entity referred to by the athlete agent in advising the athlete concerning investments. An athlete agent shall disclose any commissions or fees the athlete agent may receive as a result of an investment decision made by an athlete in response to investment advice from the athlete agent.

Effective Date: 03-22-2001

§ 4771.14 Maintaining records.

- (A) An athlete agent shall maintain all of the following records:
 - (1) The name and address of each athlete for whom the athlete agent performs services as an athlete agent in exchange for compensation;
 - (2) The amount of fees or compensation received for the performance of services for each athlete;
 - (3) A copy of the contract entered into between the athlete agent and each athlete;
 - (4) Any other information the Ohio athletic commission finds appropriate in connection with the provision of services by an athlete agent.
- (B) An athlete agent shall maintain all records required to be maintained pursuant to this section, in a manner that the commission shall prescribe, for a period of five years.

- (C) No athlete agent or employee or representative of an athlete agent shall make, or cause to be made, any false records or records containing false information.
- (D) All financial records, financial books, and other records not subject to the attorney-client privilege that are required to be maintained pursuant to this chapter shall be open to inspection by the commission and its representatives, upon reasonable notice, at the pleasure of the commission.

Effective Date: 03-22-2001

§ 4771.15 Authorized conduct.

An athlete agent may engage in the following conduct:

- (A) Provide or send written materials to an athlete if the athlete agent simultaneously submits an identical copy of the materials to the athletic director or the director's designee, or person of similar position, at the educational institution or institution of higher education in which the athlete is enrolled, or to the institution of higher education to which the athlete provided a written notice of intent to participate in intercollegiate athletics;
- (B) Contact an athlete after an athlete initiates contact with an athlete agent, provided that the athlete agent provides notice, in accordance with this chapter, to the educational institution or the institution of higher education in which the athlete is enrolled, or the institution of higher education to which the athlete has provided a written notice of intent to participate in intercollegiate athletics;
- (C) Participate in educational programs sponsored by an institution of higher education or a professional sports counseling panel at an institution of higher education.

Effective Date: 03-22-2001

§ 4771.16 Advertisements.

No athlete agent shall publish or cause to be published any false, **fraudulent**, or misleading notice, advertisement, or information with knowledge that it is false, **fraudulent**, or misleading. All advertisements of an athlete agent shall contain the name and registered business address of the athlete agent and some indication that the athlete agent is registered with the Ohio athletic commission.

As used in this section, "advertisement" includes circulars, signs, newspaper or magazine publications, or other oral or written communication that names the athlete agent in connection with the provision of services as an athlete agent.

Effective Date: 03-22-2001

§ 4771.17 Prohibited acts.

No athlete agent shall do any of the following:

- (A) Provide false information or make false promises or representations concerning the employment of an athlete;
- (B) Engage in any conduct that demonstrates bad faith or dishonesty in connection with the performance of services as an athlete agent;
- (C) Commingle money or property of an athlete with the agent's own money or property;
- (D) Offer anything of value to a person in order to induce an athlete to enter into an agreement pursuant to which the athlete agent represents the interests of the athlete;
- (E) Engage in reckless or intentional mismanagement or misconduct as an athlete agent where such conduct results in financial harm to an athlete or an educational institution or institution of higher education;
- (F) Violate the rules of the athletic conference or collegiate athletic association governing an athlete or the educational institution or institution of higher education in which an athlete is enrolled when the violation may affect the eligibility of the athlete to participate in athletic competition or otherwise penalize the educational institution or institution of higher education;
- (G) Aid or abet another in conduct that violates the rules of the athletic conference or collegiate athletic association governing an athlete or the educational institution or institution of higher education in which the athlete is enrolled, when the violation results in the ineligibility of the athlete to participate in athletic competition or otherwise penalizes the educational institution or institution of higher education;
- (H) Make any contact with an athlete that is prohibited under this chapter, other state or federal law, or the rules of any athletic conference or collegiate athletic association;
- (I) Post-date an agent or professional sports services contract;
- (J) Loan or advance money to an athlete or the family or friends of an athlete in connection with the recruitment or solicitation of the athlete;

- (K) Provide transportation, material goods, or any other services to an athlete, or family or friends of an athlete, in connection with the recruitment or solicitation of an athlete;
- (L) Publish or cause to be published any false or misleading information or advertisements concerning the athlete agent, an athlete, or the provision of services by an athlete agent.

Effective Date: 03-22-2001

§ 4771.18 Disciplinary actions.

- (A) The Ohio athletic commission may refuse to grant or renew a registration, or may suspend or revoke a registration of an athlete agent upon proof satisfactory to the commission that the athlete agent or an employee or representative of the athlete agent has done any of the following:
 - (1) Made false or misleading statements of a material nature in an application for registration as an athlete agent;
 - (2) Been convicted of or pleaded guilty to an offense in connection with the person's service as an athlete agent in this or another state;
 - (3) Been convicted of or pleaded guilty to an offense involving illegal gambling;
 - (4) Engaged in conduct that has a significant adverse impact on the applicant's credibility, integrity, or competence to serve in a fiduciary capacity;
 - (5) Misappropriated funds or engaged in other specific conduct that would render the applicant unfit to serve in a fiduciary capacity, including being convicted of or pleading guilty to offenses involving embezzlement, theft, or **fraud**;
 - (6) Violated a provision of this chapter or a rule adopted under this chapter.
- (B) Upon receiving a complaint of a violation of this chapter or a rule adopted under it, the commission shall conduct an investigation of the complaint. If the commission finds reasonable cause to believe a violation occurred, the commission shall conduct a hearing in accordance with Chapter 119. of the Revised Code to determine if a violation occurred. If the commission finds a violation occurred, the commission may suspend or revoke, or refuse to issue or renew, the registration of an athlete agent for such period of time as the commission finds appropriate.

Upon completion of an investigation, if the commission finds no reasonable grounds to believe a violation occurred, the commission shall certify without a hearing that no violation occurred. The commission shall serve the certification on all parties addressed in the complaint by certified mail, return receipt requested. The certification shall be considered a final resolution of the matter if no objection to the certification is filed. A party involved in the complaint may file an objection to the certification with the commission within ten days after the date the certification is mailed. If a party files an objection to the certification within the prescribed period, the commission, within its discretion, may conduct a hearing in accordance with Chapter 119. of the Revised Code to determine if a violation occurred.

Effective Date: 03-22-2001

§ 4771.19 Civil actions.

A person who is injured by a violation of this chapter may initiate a civil action for legal and equitable relief against an athlete agent in a court having jurisdiction over the matter. The plaintiff also may name the surety, the named holder of any security required of an athlete agent under this chapter, or the carrier of malpractice insurance for an athlete agent as additional parties to the action. This cause of action may be transferred or assigned in the same manner as prescribed for civil actions under Ohio law. The amount of damages claimed by the plaintiff, and not the amount of bond, security, or insurance held in the name of an athlete agent, determines the jurisdiction of the court in which the action is brought. In a civil action brought under this section, a court shall not award punitive or exemplary damages against a surety.

Effective Date: 03-22-2001

§ 4771.20 Civil actions—institution of higher education.

(A) An institution of higher education may bring a civil action against an athlete agent who violates this chapter for compensatory damages, punitive or exemplary damages, and equitable relief as the court finds appropriate. A court may grant equitable relief to a plaintiff under this section to prevent harm that could result from the acts or omissions of an athlete or athlete agent if the court finds a reasonable likelihood that a violation occurred.

- (B) For purposes of this section, an institution of higher education suffers harm when, as the result of the acts of an athlete agent or an athlete, both of the following occur:
- (1) The institution or an athlete enrolled at the institution is penalized or is declared ineligible to compete in intercollegiate athletics by a national association that promotes or regulates intercollegiate athletics or by an intercollegiate athletic conference.
 - (2) As a result of the penalty or declaration of ineligibility, the institution of higher education experiences any of the following:
 - (a) A loss of the ability to grant an athletic scholarship;
 - (b) A loss of the ability to recruit an athlete;
 - (c) A loss of eligibility to participate in intercollegiate competition;
 - (d) A loss of eligibility to participate in post-season athletic competition;
 - (e) A forfeiture of any athletic contest;
 - (f) An adverse financial impact including, but not limited to, lost revenue from media coverage of athletic competition or lost ticket sales.
- (C) An institution of higher education that prevails in an action brought under this section may recover compensatory and punitive or exemplary damages. A court also may award court costs and reasonable attorney's fees to a prevailing plaintiff.
- (D) In a civil action brought under this section, a court shall not award punitive or exemplary damages against a surety.

Effective Date: 03-22-2001

§ 4771.21 Jurisdiction—service of process.

Any person who conducts business in this state as an athlete agent consents to the jurisdiction of the courts of this state, whether or not the person is registered as an athlete agent with the Ohio athletic commission.

If an athlete agent conducts business in this state and thereafter leaves this state with intent to defraud creditors or to avoid service of process in an action brought under this chapter, the athlete agent thereby makes the secretary of state of the state of Ohio the agent of the athlete agent for purposes of service of process in any civil action or proceeding instituted in the courts of this state against the athlete agent arising out of, or by reason of, the athlete agent's conduct within this state. This appointment is irrevocable.

The process shall be served by the officer to whom the process is directed or by the sheriff of Franklin county. The process shall be served as follows:

- (A) Upon the secretary of state by leaving the process and a true and attested copy of the process at the office of the secretary of state, at least fifteen days before the return day of the process; and
- (B) By sending to the defendant, at the defendant's last known address, by registered mail, postage prepaid, a like true and attested copy of the process, with an indorsement on the process of the service upon the secretary of state. The registered mail return receipt of the defendant shall be attached to and made a part of the return of service of the process.

Effective Date: 03-22-2001

§ 4771.22 Athlete agents registration fund.

The Ohio athletic commission shall deposit all money it receives under this chapter to the credit of the occupational licensing and regulatory fund, created under section 4743.05 of the Revised Code.

Effective Date: 06-26-2003

§ 4771.99 Penalty.

- (A) Whoever violates section 4771.06 or division (J) or (K) of section 4771.17 of the Revised Code is guilty of a misdemeanor of the first degree.
- (B) An athlete agent who violates division (C) of section 4771.02 of the Revised Code is guilty of a misdemeanor of the first degree.

Effective Date: 03-22-2001

OKLAHOMA

Okla. Stat. Ann. tit. 70 § 821.81 to § 821.99 (West 2005)

§ 821.81. Short title

Sections 1 through 19 of this act shall be known and may be cited as the "Uniform Athlete Agents Act".

§ 821.82. Definitions

As used in the Uniform Athlete Agents Act:

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;
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 and a student-athlete, to recruit or solicit the student-athlete to enter into an agency contract;
5. "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;

6. "Intercollegiate sport" means a sport played at the collegiate level for which eligibility requirements for participation by a student-athlete are established by a national association for the promotion or regulation of collegiate athletics;

7. "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;

8. "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. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

10. "Registration" means registration as an athlete agent pursuant to the Uniform Athlete Agents Act;

11. "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; and

12. "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.

§ 821.83. Service of process—Subpoenas

- A. By acting as an athlete agent in this state, a nonresident individual appoints the Secretary of State as the individual's agent for service of process in any civil action in this state related to the individual's acting as an athlete agent in this state.
- B. The Secretary of State may issue subpoenas for any material that is relevant to the administration of the Uniform Athlete Agents Act.

§ 821.84. Certificate of registration required—Exception

- A. Except as provided in subsection B of this section, an individual shall not act as an athlete agent in this state without holding a certificate of registration pursuant to Section 6 or 8 of this act.

- B. Before being issued a certificate of registration, an individual may act as an athlete agent in this state for all purposes except signing an agency contract, if:
 - 1. A student-athlete or another person acting on behalf of the student-athlete initiates communication with the individual; and
 - 2. Within seven (7) days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in this state.
- C. An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract.

§ 821.85. Application for registration—Submission of out-of-state application and registration

- A. An applicant for registration shall submit an application for registration to the Secretary of State in a form prescribed by the Secretary of State. An application filed under this section is a public record. The application shall be in the name of an individual and, except as provided in subsection B of this section, signed or otherwise authenticated by the applicant under penalty of perjury and state or contain:
 - 1. The name of the applicant and the address of the applicant's principal place of business;
 - 2. The name of the applicant's business or employer, if applicable;
 - 3. Any business or occupation engaged in by the applicant for the five (5) years next preceding the date of submission of the application;
 - 4. A description of the applicant's:
 - a. formal training as an athlete agent,
 - b. practical experience as an athlete agent, and
 - c. educational background relating to the applicant's activities as an athlete agent;
 - 5. The names and addresses of three individuals not related to the applicant who are willing to serve as references;
 - 6. The name, sport, and last-known team for each individual for whom the applicant acted as an athlete agent during the five (5) years next preceding the date of submission of the application;
 - 7. The names and addresses of all persons who are:

- a. with respect to the athlete agent's business if it is not a corporation, the partners, members, officers, managers, associates, or profit-sharers of the business, and
 - b. with respect to a corporation employing the athlete agent, the officers, directors, and any shareholder of the corporation having an interest of five percent (5%) or greater;
8. Whether the applicant or any person named pursuant to paragraph 7 of this subsection has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony, and identify the crime;
 9. Whether there has been any administrative or judicial determination that the applicant or any person named pursuant to paragraph 7 of this subsection made a false, misleading, deceptive, or **fraudulent** representation;
 10. Any instance in which the conduct of the applicant or any person named pursuant to paragraph 7 of this subsection resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or educational institution;
 11. Any sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to paragraph 7 of this subsection arising out of occupational or professional conduct; and
 12. Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any person named pursuant to paragraph 7 of this subsection as an athlete agent in any state.
- B. An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another state, may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to subsection A of this section. The Secretary of State shall accept the application and the certificate from the other state as an application for registration in this state if the application to the other state:
1. Was submitted in the other state within six (6) 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.

**§ 821.86. Issuance or refusal to issue certificate of registration—
Renewal—Submission of out-of-state application for renewal and certificate of registration**

- A. Except as provided in subsection B of this section, the Secretary of State shall issue a certificate of registration to an individual who complies with subsection A of Section 5 of this act or whose application has been accepted under subsection B of Section 5 of this act.
- B. The Secretary of State may refuse to issue a certificate of registration if the Secretary of State determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the Secretary of State may consider whether the applicant has:
 1. Been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony;
 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 14 of this act;
 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 of this section, the Secretary of State 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 Secretary of State. An application filed under 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. 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 of this section, may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. The Secretary of State 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 (6) months next preceding the filing in this state and the applicant certifies the information contained in the application for renewal is current;
 - 2. Contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this state; and
 - 3. Was signed by the applicant under penalty of perjury.
- F. A certificate of registration or a renewal of a registration is valid for two (2) years.

§ 821.87. Suspension, revocation or refusal to renew certificate of registration

- A. The Secretary of State may suspend, revoke, or refuse to renew a registration for conduct that would have justified denial of registration under subsection B of Section 6 of this act.
- B. The Secretary of State may deny, suspend, revoke, or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing. The Administrative Procedures Act shall apply to the Uniform Athlete Agents Act.

§ 821.88. Temporary certificate of registration

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

§ 821.89. Fees

- A. An application for registration or renewal of registration must be accompanied by a fee in the following amount:

1. One Thousand Dollars (\$1,000.00) for an initial application for registration;
 2. One Thousand Dollars (\$1,000.00) for an application for registration based upon a certificate of registration or licensure issued by another state;
 3. One Thousand Dollars (\$1,000.00) for an application for renewal of registration; or
 4. One Thousand Dollars (\$1,000.00) for an application for renewal of registration based upon an application for renewal of registration or licensure submitted in another state.
- B. For the initial registration, the Secretary of State shall credit against the fee required by subsection A of this section the prorated value of any filing fee paid by an athlete agent for registration as an athlete agent prior to January 1, 2004, for the time from January 1, 2004, until the date the prior registration would have expired.
- C. The Secretary of State shall return any surety bond deposit filed with the Secretary of State by an athlete agent prior to January 1, 2004.
- D. All registration fees collected pursuant to this section shall be deposited in the Revolving Fund for the Office of the Secretary of State.

§ 821.90. 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 state or 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 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, WITHIN SEVENTY-TWO (72) HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND
 3. YOU MAY CANCEL THIS CONTRACT WITHIN FOURTEEN (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.
- 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.

§ 821.91. Notice to educational institution

- A. Within seventy-two (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 the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.
- B. Within seventy-two (72) 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 the student-athlete has entered into an agency contract.

§ 821.92. Student-athlete's right to cancel

- A. A student-athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within fourteen (14) days after the contract is signed.
- B. A student-athlete may not waive the right to cancel an agency contract.
- C. If a student-athlete cancels an agency contract, the student-athlete is not required to pay 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.

§ 821.93. Records to be retained by athlete agent

- A. An athlete agent shall retain the following records for a period of five (5) years:
 - 1. The name and address of each individual represented by the athlete agent;
 - 2. Any agency contract entered into by the athlete agent; and
 - 3. Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract.
- B. Records required by subsection A of this section to be retained shall be open to inspection by the Secretary of State during normal business hours.

§ 821.94. Prohibited conduct

- A. An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, shall not:
 - 1. Give any 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 any individual other than the student-athlete or another registered athlete agent.
- B. An athlete agent shall not intentionally:
 - 1. Initiate contact with a student-athlete unless the athlete agent registered pursuant to the Uniform Athlete Agents Act;

2. Refuse or fail to retain or permit inspection of the records required to be retained by Section 13 of this act;
3. Fail to register when required by Section 4 of this act;
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 before the student-athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate as a student-athlete in that sport.

§ 821.95. Criminal penalties

An athlete agent who violates Section 14 of this act is guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than Five Hundred Dollars (\$500.00) or by imprisonment not to exceed one (1) year, or both such fine and imprisonment.

§ 821.96. Right of action by educational institution—Damages—Restriction of rights, remedies, or defenses

- 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 the Uniform Athlete Agents Act.
- B. Damages of an educational institution under subsection A of this section include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student-athlete, the educational institution was injured by a violation of the Uniform Athlete Agents Act 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 under 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. Any liability of the athlete agent or the former student-athlete under this section is several and not joint.
- E. The Uniform Athlete Agents Act does not restrict rights, remedies, or defenses of any person under law or equity.

§ 821.97. Administrative penalties

- A. The Secretary of State may assess an administrative penalty against an athlete agent not to exceed Twenty-five Thousand Dollars (\$25,000.00) for a violation of the Uniform Athlete Agents Act.
- B. All administrative penalties collected pursuant to this section shall be deposited in the Revolving Fund for the Office of the Secretary of State.

§ 821.98. Uniformity of application and construction

In applying and construing the Uniform Athlete Agents Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 821.99. Electronic records or signatures—Conformity with federal law

The provisions of the Uniform Athlete Agents Act governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000), and supersede, modify, and limit the Electronic Signatures in Global and National Commerce Act.

OREGON

Or. Rev. Stat. § 702.005 to § 702.065

§ 702.005 Definitions.

As used in ORS 702.005 to 702.065, 702.991 and 702.994:

(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) (a) “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. “Athlete agent” includes an individual who represents to the public that the individual is an athlete agent.

(b) “Athlete agent” does not include a spouse, parent, sibling, grandparent or legal guardian of the student athlete or an individual acting solely on behalf of a professional sports team or professional sports organization.

(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) “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.

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

(7) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public body, as defined in ORS 174.109, or any other legal or commercial entity.

(8) "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) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(10) "Registration" means registration as an athlete agent pursuant to ORS 702.005 to 702.065, 702.991 and 702.994.

(11) "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.

(12) "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.

§ 702.012 Registration required to act as athlete agent; exceptions; issuance; expiration; renewal; suspension; revocation.

- (1) Except as otherwise provided in subsection (2) of this section, an individual may not act as an athlete agent in Oregon without holding a certificate of registration issued under this section or ORS 702.019.
- (2) Before being issued a certificate of registration, an individual may act as an athlete agent in Oregon for all purposes except signing an agency contract, if:
 - (a) A student athlete or another person acting on behalf of the student athlete initiates communication with the individual; and
 - (b) Within seven days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in Oregon.
- (3) An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract.

- (4) Except as otherwise provided in subsection (5) of this section, the Department of Education shall issue a certificate of registration to an individual who complies with ORS 702.017 (1) and (2) or whose application has been accepted under ORS 702.017 (3).
- (5) The department may refuse to issue a certificate of registration if the department determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the department may consider whether the applicant has:
 - (a) Been convicted of a crime that, if committed in Oregon, would be a crime involving moral turpitude or a felony;
 - (b) Made a materially false, misleading, deceptive or **fraudulent** representation in the application or as an athlete agent;
 - (c) Engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;
 - (d) Engaged in conduct prohibited by ORS 702.027;
 - (e) 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;
 - (f) 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
 - (g) Engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty or integrity.
- (6) In making a determination under subsection (5) of this section, the department shall consider:
 - (a) How recently the conduct occurred;
 - (b) The nature of the conduct and the context in which it occurred; and
 - (c) Any other relevant conduct of the applicant.
- (7) An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the department. 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.
- (8) 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 (7) of this section, may file a copy of the application for renewal and a valid

certificate of registration or licensure from the other state. The department shall accept the application for renewal from the other state as an application for renewal in Oregon if the application to the other state:

- (a) Was submitted in the other state within the preceding six months and the applicant certifies that the information contained in the application for renewal is current;
 - (b) Contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in Oregon; and
 - (c) Was signed by the applicant under penalty of perjury.
- (9) A certificate of registration or a renewal of a registration is valid for two years.
- (10) The department may suspend, revoke or refuse to renew a registration for conduct that would have justified denial of registration under subsection (5) of this section.
- (11) The department may deny, suspend, revoke or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing.

§ 702.017. Application form; requirements for registration.

- (1) An applicant for registration shall submit an application for registration to the Department of Education in a form prescribed by the department and, if requested by the department, shall allow the department to take fingerprints for the purpose of requesting a state or nationwide criminal records check under ORS 181.534.
- (2) The application must be in the name of an individual and, except as otherwise provided in subsection (3) of this section, signed or otherwise authenticated by the applicant under penalty of perjury. The application must state or contain:
- (a) The name of the applicant and the address of the applicant's principal place of business;
 - (b) The name of the applicant's business or employer, if applicable;
 - (c) Any business or occupation engaged in by the applicant for the five years preceding the date of submission of the application;
 - (d) 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 the applicant's activities as an athlete agent;

- (e) The names and addresses of three individuals not related to the applicant who are willing to serve as references;
 - (f) The name, sport and last known team for each individual for whom the applicant acted as an athlete agent during the five years preceding the date of submission of the application;
 - (g) The names and addresses of all persons who are:
 - (A) With respect to the athlete agent's business if the business is not a corporation, the partners, members, officers, managers, associates or profit sharers of the business; and
 - (B) With respect to a corporation employing the athlete agent, the officers, directors and any shareholder of the corporation having an interest of five percent or more;
 - (h) Whether the applicant or any person named pursuant to paragraph (g) of this subsection has been convicted of a crime that, if committed in Oregon, would be a crime involving moral turpitude or a felony, and identify the crime;
 - (i) Whether there has been any administrative or judicial determination that the applicant or any person named pursuant to paragraph (g) of this subsection has made a false, misleading, deceptive or **fraudulent** representation;
 - (j) Whether there has been any denial of an application for, suspension or revocation of or refusal to renew the registration or licensure of the applicant or any person named pursuant to paragraph (g) of this subsection as an athlete agent in any state;
 - (k) Any sanction, suspension or disciplinary action taken against the applicant or any person named pursuant to paragraph (g) of this subsection arising out of occupational or professional conduct; and
 - (l) Any instance in which the conduct of the applicant or any person named pursuant to paragraph (g) of this subsection resulted in the imposition of a sanction, suspension or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student athlete or educational institution.
- (3) An individual who has submitted an application for and holds a certificate of registration or licensure as an athlete agent in another state may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to subsection (2) of this section. The department shall accept the application and the certificate from the other state as an application for registration in Oregon if the application to the other state:

- (a) Was submitted in the other state within the preceding six months and the applicant certifies that the information contained in the application is current;
- (b) Contains information substantially similar to or more comprehensive than that required in an application submitted in Oregon; and
- (c) Was signed by the applicant under penalty of perjury.

§ 702.019. Temporary certificate of registration.

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

§ 702.020. Laws 1971, c. 771, § 21; Laws 1973, c. 576, § 1; Laws 1983, c. 411, § 2; Laws 1987, c. 447, § 138; repealed by Laws 1995, c. 386, § 1

§ 702.022. Repealed by Laws 2005, c. 730, § 77, eff. Aug. 17, 2005.

§ 702.023. Application for registration or renewal, fee

- (1) An application for registration or renewal of registration must be accompanied by a fee in the following amount:
 - (a) \$250 for an initial application for registration;
 - (b) \$150 for an application for registration based upon a certificate of registration or licensure issued by another state;
 - (c) \$150 for an application for renewal of registration; or
 - (d) \$150 for an application for renewal of registration based upon an application for renewal of registration or licensure submitted in another state.
- (2) Any fees collected under this section by the Department of Education shall be deposited in the Department of Education Account established under ORS 326.115.

§ 702.027. Restrictions on athlete agents.

An athlete agent may not intentionally:

- (1) Initiate contact with a student athlete unless registered under ORS 702.005 to 702.065, 702.991 and 702.994;

- (2) Refuse or fail to retain or permit inspection of the records required to be retained by ORS 702.059;(3) Fail to register when required by ORS 702.012;
- (3) Provide materially false or misleading information in an application for registration or renewal of registration;
- (4) Predate or postdate an agency contract; or
- (5) Fail to notify a student athlete before the student athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student athlete ineligible to participate as a student athlete in that sport.

§ 702.030. Restrictions on inducement of student athletes.

An athlete agent may not, with the intent to induce a student athlete to enter into an agency contract, give any materially false or misleading information or make a materially false promise or representation.

§ 702.032. Offering anything of value to student athlete as contract inducement prohibit.

An athlete agent may not, for the purpose of inducing a student athlete to enter into an agency contract, furnish anything of value to the student athlete before the student athlete enters into an agency contract.

§ 702.037. Offering anything of value to other individuals as contract inducement prohibited.

An athlete agent may not, with the intent to induce a student athlete to enter into an agency contract, furnish anything of value to any individual other than the student athlete or another registered athlete agent.

§ 702.042. Repealed by Laws 2005, c. 525,

§ 702.047. Contract requirements.

- (1) An agency contract must be in a record, signed or otherwise authenticated by the parties.
- (2) An agency contract must state or contain:
 - (a) 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;

- (b) 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;
 - (c) A description of any expenses that the student athlete agrees to reimburse;
 - (d) A description of the services to be provided to the student athlete;
 - (e) The duration of the contract; and
 - (f) The date of execution.
- (3) An agency contract must contain, in close proximity to the signature of the student athlete, a conspicuous notice in boldfaced type in capital letters stating:

WARNING TO THE STUDENT ATHLETE:

IF YOU SIGN THIS CONTRACT:

- (1) **YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT ATHLETE IN YOUR SPORT.**
 - (2) **IF YOU HAVE AN ATHLETIC DIRECTOR, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, OR BEFORE YOU PARTICIPATE IN ANY INTERSCHOLASTIC OR INTERCOLLEGIATE SPORTS EVENT, WHICHEVER OCCURS FIRST.**
 - (3) **YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.**
- (4) 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.
- (5) The athlete agent shall give a record of the signed or otherwise authenticated agency contract to the student athlete at the time of execution.

§ 702.050. Laws 1971, c. 771, § 2; Laws 1979, c. 352, § 5; Laws 1983, c. 411, § 3; repealed by Laws 1995, c. 386

§ 702.052. Student may cancel contract.

- (1) A student athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within 14 days after the contract is signed.
- (2) The right of a student to cancel a contract under this section may not be waived.
- (3) If a student athlete cancels 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.

§ 702.054. Notice of contract.

- (1) Within 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 the athlete agent has reasonable grounds to believe the student athlete intends to enroll.
- (2) Within 72 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 the student athlete has entered into an agency contract.

§ 702.057. Civil remedies available for educational institutions.

- (1) An educational institution shall have a cause of action against an athlete agent or a former student athlete for damages caused by a violation of ORS 702.005 to 702.065, 702.991 and 702.994. In an action under this section, the court may award to the prevailing party costs and reasonable attorney fees.
- (2) For the purposes of this section, damages of an educational institution include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student athlete, the educational institution was injured by a violation of ORS 702.005 to 702.065, 702.991 and 702.994 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.

- (3) A cause of action under 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.
- (4) Any liability of the athlete agent or the former student athlete under this section is several and not joint.
- (5) ORS 702.005 to 702.065, 702.991 and 702.994 do not restrict rights, remedies or defenses of any person under law or equity.

§ 702.059. Retention of records; inspection.

- (1) An athlete agent shall retain the following records for a period of five years:
 - (a) The name and address of each individual represented by the athlete agent;
 - (b) Any agency contract entered into by the athlete agent; and
 - (c) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student athlete to enter into an agency contract.
- (2) Records required by subsection (1) of this section to be retained are open to inspection by the Department of Education during normal business hours of the athlete agent.

§ 702.060. Laws 1971, c. 771, § 12; Laws 1973, c. 832, § 62; Laws 1979, c. 352, § 6; Laws 1983, c. 411, § 4; repealed by Laws 1995, c. 386

§ 702.062. Appointment of Department of Education as agent for service of process; subpoenas.

- (1) By acting as an athlete agent in Oregon, a nonresident individual appoints the Department of Education as the individual's agent for service of process in any civil action in Oregon related to the individual's acting as an athlete agent in Oregon.
- (2) The department may issue subpoenas for any material that is relevant to the administration of ORS 702.005 to 702.065, 702.991 and 702.994.

§ 702.063. Rules.

The State Board of Education may adopt any rules necessary to carry out the provisions of ORS 702.005 to 702.065, 702.991 and 702.994.

§ 702.065. Uniformity of law.

In applying and construing ORS 702.005 to 702.065, 702.991 and 702.994, the courts and the Department of Education shall give consideration to the need to promote uniformity of the law with respect to its subject matter among states that have enacted the Uniform Athlete Agents Act.

PENNSYLVANIA

5 Pa. Cons. Stat. Ann. § 3101 to § 3320 (West Supp. 2006)

§ 3101. Short title of part

This part shall be known and may be cited as the Uniform Athlete Agents Act.

§ 3102. Definitions

The following words and phrases when used in this part shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Agency contract.” Any contract or agreement in which an individual or a student athlete authorizes or empowers a person to negotiate or solicit on behalf of the individual or the student athlete one or more professional sports services contracts

“Athlete agent.” A person who enters into an agency contract with an individual or a student athlete or directly or indirectly recruits or solicits an individual or a student athlete to enter into an agency contract. The term does not include a spouse, parent, sibling, son, daughter or grandparent of the individual or student athlete, an individual acting solely on behalf of a professional sports team or a coach, trainer or other employee of a secondary or postsecondary school who is acting on behalf of a student athlete of the same secondary or postsecondary school, provided that such activities are within the scope of employment of the coach, trainer or other employee. The term includes a person who represents to the public that the person is an athlete agent.

“Athletic director.” 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.

“Commission.” The State Athletic Commission.

“Contact.” A communication, direct or indirect, between an athlete agent and an individual or a student athlete to recruit or solicit the individual or student athlete to enter into an agency contract, including by telephonic, facsimile or other electronic method, mail, electronic mail or personal means.

“Conviction.” A finding of guilt by a judge, jury, a plea of guilty or a plea of nolo contendere.

“Department.” The Department of State of the Commonwealth.

“Institution of higher education.” A public or private college or university, including a community college.

“Intercollegiate sport.” 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.” An individual, corporation, partnership, limited liability company, association, joint venture, public corporation or any other legal or commercial entity.

“Professional sports services contract.” A contract or 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.” 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.” Registration as an athlete agent pursuant to Chapter 33 (relating to registration).

“State.” 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.” 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.

§ 3103. Administration

The commission shall administer this part.

§ 3104. Service of process

By engaging in the business of an athlete agent in this Commonwealth, a nonresident individual appoints the Secretary of the Commonwealth as the individual's agent to accept service of process in any civil action related to the individual's business as an athlete agent in this Commonwealth.

§ 3105. Subpoenas

The commission may issue subpoenas for any relevant material under this part.

§ 3106. Rules and regulations

The commission shall have the power and duty to adopt and revise regulations in accordance with the act of June 25, 1982 (P.L. 633, No. 181), known as the Regulatory Review Act, as are reasonably necessary to administer and effectuate the purposes of this part.

§ 3301. Athlete agent registration

- (a) Certificate of registration required.—Except as otherwise provided in subsection (b), a person shall not directly or indirectly serve or offer to serve as an athlete agent in this Commonwealth before being issued a certificate of registration under section 3303 (relating to issuance of registration). An out-of-State agent must register if the agent through direct or indirect contact recruits or solicits an individual or student athlete to enter into an agency contract or procures, offers, promises or attempts to obtain employment for an individual or student athlete with a Pennsylvania professional sports team as a professional athlete in this Commonwealth where any one or more of the following conditions apply:
- (1) The athlete agent is a resident of this Commonwealth.
 - (2) The athlete is a resident of this Commonwealth or is attending an institution of higher education in this Commonwealth.
 - (3) The professional sports team has its home field or its corporate headquarters in this Commonwealth.
- (b) Exception.—An unregistered out-of-State agent or person may act as an athlete agent in this Commonwealth before being issued a certifi-

cate of registration for all purposes except signing an agency contract if the following conditions are met:

- (1) A student athlete or another acting on behalf of the student athlete initiates contact with the person.
 - (2) Within seven days after an initial act as an athlete agent, the person submits an application to register as an athlete agent in this Commonwealth.
 - (3) The unregistered out-of-State agent or person has never had registration issued under this chapter or a predecessor statute revoked by the commission.
- (c) Certain contracts void.—An agency contract resulting from conduct in violation of this section is void. The athlete agent shall return any consideration received under the contract.

§ 3302. Application for registration

- (a) Procedure.—An applicant for registration shall submit an application for registration to the commission in writing on a form supplied by the commission and approved by the department. Except as otherwise provided in subsection (b), the application must be in the name of an individual and be verified by the applicant and must state, contain or be accompanied by:
- (1) The information required by this chapter and such other information as the commission may reasonably require.
 - (2) A processing fee of \$100.
 - (3) The name of the applicant and the address of the applicant's principal place of business.
 - (4) The name of the applicant's business or employer, if applicable.
 - (5) Any business or occupation engaged in by the applicant for the five years next preceding the date of submission of the application.
 - (6) A description of the applicant's:
 - (i) Formal training as an athlete agent.
 - (ii) Practical experience as an athlete agent.
 - (iii) Educational background relating to the applicant's activities as an athlete agent.
 - (7) The names and addresses of three individuals not related to the applicant who are willing to serve as references.

- (8) The name, sport and last known team for each individual for whom the applicant provided services as an athlete agent during the five years next preceding the date of submission of the application.
 - (9) The names and addresses of all persons who are:
 - (i) With respect to the athlete agent's business if it is not a corporation, the partners, officers, associates or profit-sharers.
 - (ii) With respect to a corporation employing the athlete agent, the officers, directors and any shareholder of the corporation with a 5% or greater interest.
 - (10) Whether the applicant or any other person named pursuant to paragraph (9) has been convicted of a crime that, if committed in this Commonwealth, would be a felony or other crime involving moral turpitude, and identify the crime.
 - (11) Whether there has been any administrative or judicial determination that the applicant or any other person named pursuant to paragraph (9) has made a false, misleading, deceptive or **fraudulent** representation.
 - (12) Any instance in which the conduct of the applicant or any other person named pursuant to paragraph (9) resulted in the imposition of a sanction, suspension or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student athlete or educational institution.
 - (13) Any sanction, suspension or disciplinary action taken against the applicant or any other person named pursuant to paragraph (9) arising out of occupational or professional conduct.
 - (14) Whether there has been any denial of an application for, suspension or revocation of or refusal to renew the registration or licensure of the applicant or any other person named pursuant to paragraph (9) as an athlete agent in any state.
- (b) Out-of-State agents.—A person who has submitted an application for and received a certificate of registration or licensure as an athlete agent in another state may submit a copy of the application and a valid certificate of registration or licensure from the other state in lieu of submitting an application in the form prescribed pursuant to subsection (a). The commission shall accept the application and the certificate from the other state as an application for registration in this Commonwealth if the application to the other state:
- (1) as submitted in the other state within the six months next preceding the submission of the application in this Commonwealth

and the applicant certifies 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 Commonwealth.
 - (3) Was signed by the applicant.
 - (4) The unregistered out-of-State agent has never had registration issued under this chapter or a predecessor statute revoked by the commission.
- (c) Criminal background check.—Every applicant shall complete an application or process as may be necessary to request the Pennsylvania State Police to provide a copy of the applicant’s criminal history record to the commission.

§ 3303. Issuance of registration

Except as otherwise provided in section 3304 (relating to denial of registration), the commission shall issue a certificate of registration to a person:

- (1) Who complies with section 3302(a) and (c) (relating to application for registration).
- (2) Whose application has been accepted under section 3302(b).
- (3) Who is 21 years of age or older.
- (4) Who possesses good moral character.
- (5) Who neither at the time of application nor within ten years prior to the time of application has been finally found to have participated in any conduct that led to the imposition of sanctions against an individual or student athlete, institution of higher education or professional sports team by any association or organization that establishes rules for the conduct of amateur or professional sports.

§ 3304. Denial of registration

- (a) Grounds.—The commission may refuse to issue a certificate of registration if the commission determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant’s fitness to serve as an athlete agent. In making the determination, the commission may consider whether the applicant has:

- (1) Made a materially false, misleading, deceptive or **fraudulent** representation as an athlete agent or in the application.
 - (2) Engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity.
 - (3) Engaged in conduct prohibited by section 3313 (relating to prohibited acts).
 - (4) Had a registration or licensure as an athlete agent suspended, revoked or denied or been refused renewal of registration or licensure in any state.
 - (5) Engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty or integrity.
- (b) Additional considerations.—In making a determination under subsection (a), the commission shall consider:
- (1) How recently the conduct occurred.
 - (2) The nature of the conduct and the context in which it occurred.
 - (3) Any other relevant conduct of the applicant.
- (c) Issuance of registration prohibited.—The commission shall not issue athlete agent registration to or renew the athlete agent registration of a person who has been convicted of any of the following offenses, or any comparable offense in another jurisdiction, within ten years of the date of application:
- (1) An offense under the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act.
 - (2) An offense under the following provisions of 18 Pa.C.S. (relating to crimes and offenses):
 - Section 902 (relating to criminal solicitation).
 - Section 908 (relating to prohibited offensive weapons).
 - Section 2502 (relating to murder).
 - Section 2709(a)(4), (5), (6) or (7) (relating to harassment).
 - Section 2709.1 (relating to stalking).
 - Section 2901 (relating to kidnapping).
 - Section 3121 (relating to rape).
 - Section 3126 (relating to indecent assault).
 - Section 3923 (relating to theft by **extortion**).
 - Section 4109 (relating to rigging publicly exhibited contest).
 - Section 4302 (relating to incest).
 - Section 4304 (relating to endangering welfare of children).
 - Section 4305 (relating to dealing in infant children).

Section 4701 (relating to bribery in official and political matters).
Section 4902 (relating to perjury).
Section 5501 (relating to riot).
Section 5512 (relating to lotteries, etc.).
Section 5513 (relating to gambling devices, gambling, etc.).
Section 5514 (relating to pool selling and bookmaking).
Section 5901 (relating to open lewdness).
Section 5902 (relating to prostitution and related offenses).
Section 5903 (relating to obscene and other sexual materials and performances).
Section 5904 (relating to public exhibition of insane or deformed person).
Section 6301 (relating to corruption of minors).
Section 6312 (relating to sexual abuse of children).
Section 7107 (relating to unlawful actions by athlete agents).

- (3) The commission shall not issue registration to any person who has been found by the commission to have engaged in the activities of an athlete agent in this Commonwealth without acquiring registration as required by this chapter within 12 months prior to the date of application.

§ 3305. Renewal of registration

- (a) Procedure.—An athlete agent may apply to renew a registration by submitting an application for renewal in writing on a form supplied by the commission and approved by the department. The application for renewal must be in the name of an individual and be verified by the applicant and must state, contain or be accompanied by:
- (1) Current information on all matters required in an original registration.
 - (2) Such other information as the commission may reasonably require.
 - (3) A processing fee of \$100.
- (b) Out-of-state agents.—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 under subsection (a), may file a copy of the application for renewal and a valid certificate of registration from the other state. The commission shall accept the application for renewal from the other state as an

application for renewal in this Commonwealth if the application to the other state:

- (1) Was submitted to the other state within the last six months 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 Commonwealth.
- (3) Was verified by the applicant.
- (4) The unregistered out-of-State agent has never had registration issued under this chapter or a predecessor statute revoked by the commission.

§ 3306. Period of registration

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

§ 3307. Suspension, revocation, restriction or refusal to renew registration

- (a) Investigation.—The commission or its designee may review the operations of all registered athlete agents and shall prepare a written report for review by the commission.
- (b) Cease and desist order.—The commission may issue an immediate cease and desist order against an athlete agent who has been found preliminarily by the commission to have committed a violation of 18 Pa.C.S. § 7107 (relating to unlawful actions by athlete agents) or a violation of this chapter. Within 20 days of issuance of the cease and desist order, the commission shall conduct a hearing to determine whether the cease and desist order should be dissolved or made permanent.
- (c) Registration suspension, revocation, restriction or refusal to renew.—The commission may suspend, revoke, restrict or otherwise limit registration or refuse to renew a registration for conduct that would have justified denial of registration under section 3304(a) (relating to denial of registration).
- (d) Notice and hearing.—The commission may deny, suspend, revoke, restrict or otherwise limit registration or refuse to renew a registration only after proper notice and an opportunity for a hearing in accordance

with 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies).

- (e) Reciprocal disciplinary or corrective action.—The commission may deny, suspend, revoke, restrict or otherwise limit registration or refuse to renew a registration of an athlete agent on the basis of a disciplinary or corrective action having been taken against the athlete agent in another state, territory, possession or country, a branch of the Federal Government or by an athletic association.

§ 3308. Fees

- (a) Amounts.—An application for registration or renewal of registration must be accompanied by a fee in the following amount:
 - (1) \$200 for an initial application for registration for an individual or sole proprietor and \$400 for a partnership, association, corporation or other legal entity.
 - (2) \$150 for an application for registration based upon a certificate of registration or licensure issued by another state for an individual or sole proprietor and \$300 for a partnership, association, corporation or other legal entity.
 - (3) \$200 for an application for renewal of registration for an individual or sole proprietor and \$400 for a partnership, association, corporation or other legal entity.
 - (4) \$150 for an application for renewal of registration based upon an application for renewal of registration or licensure submitted in another state for an individual or sole proprietor and \$400 for a partnership, association, corporation or other legal entity.
- (b) Fee increase.—If the revenues raised by fees, fines and civil penalties imposed in accordance with this chapter are not sufficient to match the expenditures necessary to carry out the provisions of this chapter, the commission shall increase those fees by regulation so that the revenues match the expenditures.

§ 3309. Form of contract for student athletes

- (a) Form generally.—An agency contract must be in a record and signed by the parties.
- (b) Contents.—An agency contract must state or 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 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 athlete student.
 - (5) The duration of the contract.
 - (6) The date of execution.
- (c) Notice.—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) Both you and your athlete agent are required to tell your athletic director, if you have an athletic director, and the commission within 72 hours after entering into an agency contract.
 - (3) You may cancel this contract within 14 days after signing it. Cancellation of the contract may not reinstate your eligibility.
- (d) Contracts not in conformity.—An agency contract that does not conform to this section is voidable by the student athlete.
- (e) Contract copy to student athlete.—The athlete agent shall give a copy of the signed agency contract to the student athlete at the time of signing.

§ 3310. Notice to educational institution

Within 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:

- (1) 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 and to the commission.

- (2) 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 to the commission.

§ 3311. Student athlete's right to cancel

- (a) Procedure.—A student athlete may cancel an agency contract by giving notice in a record to the athlete agent of the cancellation within 14 days after the contract is signed.
- (b) Waiver not permitted.—A student athlete may not waive the right to cancel an agency contract.
- (c) Consideration.—If a student athlete cancels an agency contract, the student athlete is not required to pay any consideration under the contract or to return any consideration received from the agent to induce the student athlete to enter into the contract.

§ 3312. Required records

- (a) General rule.—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) Any agency contract entered into by the athlete agent.
 - (3) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student athlete.
- (b) Records open to inspection.—Records required by subsection (a) to be retained are open to inspection by the commission during normal business hours.

§ 3313. Prohibited acts

An athlete agent may not:

- (1) Initiate contact with a student athlete unless registered under this part.
- (2) Refuse or willfully fail to retain or permit inspection of the records required by section 3312 (relating to required records).
- (3) Violate section 3301 (relating to athlete agent registration) by failing to register.

- (4) Provide materially false or misleading information in an application for registration or renewal of registration.
- (5) Predate or postdate an agency contract.
- (6) Fail to notify a student athlete prior to the student athlete's signing an agency contract for a particular sport that the signing by the student athlete may make the student athlete ineligible to participate as a student athlete in that sport.
- (7) Enter into an oral or written contract or professional sport services contract with a student athlete before the student athlete's eligibility for collegiate athletics has expired.
- (8) Before the student athlete's eligibility for collegiate athletics has expired, give, offer or promise anything of value to:
 - (i) a student athlete;
 - (ii) any member of the student athlete's immediate family; or
 - (iii) any individual who substantially contributes to the economic support of the student athlete. For purposes of this subparagraph, an individual shall be deemed to have substantially contributed to the economic support of a student athlete if the individual provides 25% or more of the cost of tuition, room and board and incidental expenses of the student athlete's education or provides to the student athlete at minimal or no cost non-college-based lodging or meals or transportation to and from college classes.
- (9) Give, offer or promise an oral or written contract which would require the athlete agent to give, offer or promise anything of value to any employee of an institution of higher education in return for a referral of a student athlete by the employee.
- (10) Engage in the activities of an athlete agent without a current valid registration.
- (11) Violate any provision of this part or regulation of the commission.

§ 3314. Civil remedies

- (a) Right of action.—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 part or for a violation of 18 Pa.C.S. § 7107 (relating to unlawful actions by athlete agents). In an action under this section, the court may award to the prevailing party costs and reasonable attorney fees.

- (b) Damages.—Damages of an educational institution under subsection (a) include losses and expenses incurred because, as a result of the activities of an athlete agent or former student athlete, the educational institution was injured by a violation of this part 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.
- (c) Accrual of action.—A right of action under 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.—Any liability of the athlete agent or the former student athlete under this section is several and not joint.
- (e) Other rights and remedies.—This part does not restrict rights, remedies or defenses of any person under law.

§ 3315. Administrative penalty

- (a) Civil penalty.—The commission may assess a civil penalty against an athlete agent not to exceed \$25,000 per violation of this part or per violation of 18 Pa.C.S. § 7107 (relating to unlawful actions by athlete agents).
- (b) Injunctive relief.—The commission may, in the name of the people of this Commonwealth, through the Office of Attorney General, apply for injunctive relief in any court of competent jurisdiction to enjoin any person from committing any act in violation of this chapter. Injunctive relief shall be in addition to and not in lieu of all penalties and other remedies in this chapter.

§ 3316. Bonding requirements

- (a) Amount.—Before any athlete agent registration is issued, the applicant shall be required to execute and file a surety bond with the commission in such reasonable amount, but not less than \$20,000, as the commission shall require.
- (b) Bond forms.—All bonds shall be upon forms supplied by the commission and which have been approved by the department. All bonds shall be accompanied by a \$25 filing fee.
- (c) Conditions of bond.—The surety bond shall be conditioned upon the following:

- (1) Compliance with this chapter.
 - (2) The payment of all sums due a person at the time the sums are due and payable.
 - (3) The payment of damages suffered by any person as a result of intentional or unintentional misstatements, misrepresentation, **fraud**, deceit or unlawful or negligent acts of the student athlete agent while acting as a student athlete agent.
- (d) Alternate security.—
- (1) In lieu of a surety bond, a registrant may deposit with the commission cash, a certified check or a letter of credit in an equivalent amount. The provisions of this section regarding bonds shall apply to the alternate security provided for in this subsection.
 - (2) The security shall not be returned to a registrant until one year after the student athlete agent's registration has expired. After that time if there are no claims against the registered athlete agent, the alternate security shall be returned to the depositor.
- (e) Recovery on bond.—Recovery may be had on a bond or deposit of alternate security in the same manner as penalties are recoverable at law

§ 3317. Exemption from registration and bonding requirement

- (a) Immediate family members.—Athlete agents who are representing an immediate family member are exempt from the provisions of this chapter.
- (b) Definition.—As used in this section, the term “immediate family” means a spouse, parent, sibling, son, daughter or grandparent.

§ 3318. Disposition of commission receipts

All fees, civil penalties, forfeitures and other moneys collected under this chapter and the regulations of the commission shall be paid into the Athletic Commission Augmentation Account.

§ 3319. Records

A record of all persons registered under this chapter shall be kept in the office of the commission and shall be open to public inspection and copying upon payment of a nominal fee for copying the record.

§ 3320. Transferability of registration

No registration issued under this chapter shall be assignable or transferable. In the event of a corporate change of status, the entity must register within 90 days.

SOUTH CAROLINA

S.C. Code Ann. § 59-102-10 to § 59-102-180 (Supp. 2005)

§ 59-102-10. Citation of chapter.

This chapter may be cited as the “Uniform Athlete Agents Act of 2004”.

§ 59-102-20. Definitions.

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.

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

(6) “Intercollegiate sport” means a sport played at the collegiate level for which eligibility requirements for participation by a student athlete are

established by a national association for the promotion or regulation of collegiate athletics.

(7) "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) "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) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(10) "Registration" means registration as an athlete agent pursuant to this chapter.

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

§ 59-102-30. Service of process on nonresident agents; subpoenas.

(A) 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) The Department of Consumer Affairs may issue subpoenas for material relevant to the administration of this chapter

§ 59-102-40. Certificate of registration as athlete agent required; exceptions.

(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.

§ 59-102-50. Application for registration; contents; registration in another state.

- (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 of the applicant and the address of the applicant's principal place of business;
 - (2) the name of the applicant's business or employer, if applicable;
 - (3) any business or occupation engaged in by the applicant for the five years next preceding the date of submission of the application;
 - (4) a description of the applicant's:
 - (a) formal training as an athlete agent;
 - (b) practical experience as an athlete agent; and
 - (c) educational background relating to his activities as an athlete agent;
 - (5) the names and addresses of three individuals not related to the applicant who are willing to serve as references;
 - (6) the name, sport, and last known team for each individual for whom the applicant acted as an athlete agent during the five years next preceding the date of submission of the application;
 - (7) the names and addresses of all persons who are:

- (a) with respect to the athlete agent's business, if it is not a corporation, the partners, members, officers, managers, associates, or profit-sharers of the business; and
 - (b) with respect to a corporation employing the athlete agent, the officers, directors, and any shareholder of the corporation having an interest of five percent or greater;
 - (8) whether the applicant or a person named pursuant to item (7) has been convicted of a crime that would be a crime involving moral turpitude or a felony if committed in this State, and identification of the crime;
 - (9) whether there has been any administrative or judicial determination that the applicant or a person named pursuant to item (7) has made a false, misleading, deceptive, or **fraudulent** representation;
 - (10) an instance in which the conduct of the applicant or a person named pursuant to item (7) resulted in the imposition against a student athlete or educational institution of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event;
 - (11) a sanction, suspension, or disciplinary action taken against the applicant or a person named pursuant to item (7) arising out of occupational or professional conduct; and
 - (12) whether there has been a denial of an application for, suspension or revocation of, or refusal to renew the registration or licensure of the applicant or a person named pursuant to item (7) as an athlete agent in any state.
- (B) An applicant for registration in this State, who has applied for and holds a certificate, registration, or licensure as an athlete agent in another state, may submit a copy of that application and certificate instead of submitting an application in the form prescribed pursuant to subsection (A). The Department of Consumer Affairs shall accept the application and the certificate from the other state as an application for registration in this State if the application to the other state:
- (1) was submitted in the other state within six months next preceding the submission of the application in this State and the applicant certifies that the information contained in the application is current;
 - (2) contains information substantially similar to or more comprehensive than that required in an application submitted in this State; and
 - (3) was signed by the applicant under penalty of perjury.

§ 59-102-60. Issuance of certificate of registration; grounds for refusal; application for renewal; renewal application submitted in another state.

- (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) been convicted of a crime that would be a crime involving moral turpitude or a felony if committed in this State;
 - (2) made a materially false, misleading, deceptive, or **fraudulent** representation in the application or as an athlete agent;
 - (3) engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;
 - (4) engaged in conduct prohibited by Section 59-102-140;
 - (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 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). The Department of Consumer Affairs shall accept the application for renewal from the other state as an application for renewal in this State if the application to the other state:
 - (1) was submitted in the other state within six months next preceding the filing in this State and the applicant certifies the information contained in the application for renewal is current;
 - (2) contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this State; and\
 - (3) was signed by the applicant under penalty of perjury.
- (F) A certificate of registration or a renewal of a registration is valid for two years.

§ 59-102-70. Suspension, revocation or refusal to renew certificate of registration; notice and hearing.

- (A) The Department of Consumer Affairs may refuse to renew a registration 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.

§ 59-102-80. Temporary certificate of registration.

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

§ 59-102-90. Fees.

An application for registration or renewal of registration must be accompanied by a fee of:

- (1) five hundred dollars for an initial application for registration; or
- (2) three hundred dollars for an application for renewal of registration.

§ 59-102-100. Agency contracts.

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

(B) An agency contract must include:

- (1) the amount and method of calculating the consideration to be paid by the student athlete for services provided by the athlete agent under the contract and other consideration the athlete agent receives from another source for entering into the contract or for providing the services;
- (2) the name of a person not listed in the application for registration or renewal of registration to be compensated because the student athlete signed the agency contract;
- (3) a description of expenses the student athlete agrees to reimburse;
- (4) a description of the services to be provided to the student athlete;
- (5) the duration of the contract; and
- (6) the date of execution.

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

“WARNING TO STUDENT ATHLETE

IF YOU SIGN THIS CONTRACT:

- (1) **YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT ATHLETE IN YOUR SPORT;**
- (2) **IF YOU HAVE AN ATHLETIC DIRECTOR, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT; AND**
- (3) **YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.”**

- (D) An agency contract that does not conform to this section is voidable by the student athlete. If a student athlete voids an agency contract, the student athlete is not required to pay consideration under the contract or to return consideration received from the athlete agent to induce the student athlete to enter into the contract.
- (E) The athlete agent shall give a record of the signed or otherwise authenticated agency contract to the student athlete at the time of execution.

§ 59-102-110. Notice of contract to athletic director.

- (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.

§ 59-102-120. Cancellation of agency contract by student.

- (A) A student athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within fourteen days after the contract is signed.
- (B) A student athlete may not waive the right to cancel an agency contract.
- (C) If a student athlete cancels an agency contract, the student athlete is not required to pay consideration under the contract or to return consideration received from the athlete agent to induce the student athlete to enter into the contract.

§ 59-102-130. Records to be maintained by athlete agent.

- (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.

§ 59-102-140. Prohibited acts of athlete agents.

- (A) An athlete agent, with the intent to induce a student athlete to enter into an agency contract, may not:
- (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:
- (1) initiate contact with a student athlete 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 before the student athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student athlete ineligible to participate as a student athlete in that sport.

§ 59-102-150. Violations and penalties.

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.

§ 59-102-160. Actions for damages; attorney's fees; accrual.

- (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.

§ 59-102-170. Administrative fine.

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.

§ 59-102-180. Application and construction of act.

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.

SOUTH DAKOTA

S.D. Codified Laws § 59-10-1 to § 59-10-20 (Supp. 2006)

§ 59-10-1. Short title

This chapter may be cited as the Uniform Athlete Agents Act.

§ 59-10-2. Definitions

In this chapter:

(1) "Agency contract," 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," 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;

(3) "Athletic director," 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," 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) "Endorsement contract," 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;

(6) "Intercollegiate sport," a sport played at the collegiate level for which eligibility requirements for participation by a student-athlete are

established by a national association for the promotion or regulation of collegiate athletics;

(7) "Person," 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;

(8) "Professional-sports-services contract" 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) "Record," information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(10) "Registration," registration as an athlete agent pursuant to this chapter;

(11) "State," 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;

(12) "Student-athlete," 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.

§ 59-10-3. Service of process—Subpoenas

- (a) By acting as an athlete agent in this state, a nonresident individual appoints the secretary of state as the individual's agent for service of process in any civil action in this state related to the individual's acting as an athlete agent in this state.
- (b) The secretary of the Department of Revenue and Regulation may issue subpoenas for any material that is relevant to the administration of this chapter.

§ 59-10-4. Athlete agents—Registration required—Void contracts

- (a) Except as otherwise provided in subsection (b), an individual may not act as an athlete agent in this state without holding a certificate of registration under § 59-10-6 or 59-10-8.

- (b) Before being issued a certificate of registration, an individual may act as an athlete agent in this state for all purposes except signing an agency contract, if:
 - (1) A student-athlete or another person acting on behalf of the student-athlete initiates communication with the individual; and
 - (2) Within seven days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in this state.
- (c) An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract.

§ 59-10-5. Registration as athlete agent—Form—Requirements

- (a) An applicant for registration shall submit an application for registration to the secretary of state in a form prescribed by the secretary of state. An application filed under this section is a public record. The application must be in the name of an individual 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 of the applicant and the address of the applicant's principal place of business;
 - (2) The name of the applicant's business or employer, if applicable;
 - (3) Any business or occupation engaged in by the applicant for the five years next preceding the date of submission of the application;
 - (4) A description of the applicant's:
 - (A) Formal training as an athlete agent;
 - (B) Practical experience as an athlete agent; and
 - (C) Educational background relating to the applicant's activities as an athlete agent;
 - (5) The names and addresses of three individuals not related to the applicant who are willing to serve as references;
 - (6) The name, sport, and last known team for each individual for whom the applicant acted as an athlete agent during the five years next preceding the date of submission of the application;
 - (7) The names and addresses of all persons who are:

- (A) With respect to the athlete agent's business if it is not a corporation, the partners, members, officers, managers, associates, or profit-sharers of the business; and
 - (B) With respect to a corporation employing the athlete agent, the officers, directors, and any shareholder of the corporation having an interest of five percent or greater;
- (8) Whether the applicant or any person named pursuant to paragraph (7) has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony, and identify the crime;
 - (9) Whether there has been any administrative or judicial determination that the applicant or any person named pursuant to paragraph (7) has made a false, misleading, deceptive, or **fraudulent** representation;
 - (10) Any instance in which the conduct of the applicant or any person named pursuant to paragraph (7) resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or educational institution;
 - (11) Any sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to paragraph (7) arising out of occupational or professional conduct; and
 - (12) Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any person named pursuant to paragraph (7) as an athlete agent in any state.
- (b) An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another state, may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to subsection (a). The secretary of state shall accept the application and the certificate from the other state as an application for registration in this state if the application to the other state:
- (1) Was submitted in the other state within six months next preceding the submission of the application in this state and the applicant certifies that the information contained in the application is current;
 - (2) Contains information substantially similar to or more comprehensive than that required in an application submitted in this state; and
 - (3) Was signed by the applicant under penalty of perjury.

§ 59-10-6. Certificate of registration—Issuance or denial—Renewal

- (a) Except as otherwise provided in subsection (b), the secretary of the Department of Revenue and Regulation shall issue a certificate of registration to an individual who complies with subdivision 59-10-5(a) or whose application has been accepted under subdivision 59-10-5(b). The secretary of the Department of Revenue and Regulation shall submit a copy of each certificate of registration issued to the Office of the Secretary of State.
- (b) The secretary of the Department of Revenue and Regulation may refuse to issue a certificate of registration if the secretary determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the secretary may consider whether the applicant has:
 - (1) Been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony;
 - (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 § 59-10-14;
 - (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 secretary of the Department of Revenue and Regulation 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 secretary of state. An application filed under this section is a public record. The application for renewal must be signed by the applicant under penalty of per-

jury and must 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 secretary of state shall accept the application for renewal from the other state as an application for renewal in this state if the application to the other state:
 - (1) Was submitted in the other state within six months next preceding the filing in this state and the applicant certifies the information contained in the application for renewal is current;
 - (2) Contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this state; and
 - (3) Was signed by the applicant under penalty of perjury.
- (f) A certificate of registration or a renewal of a registration is valid for two years.

§ 59-10-7. Suspension, revocation, or refusal to renew registration

- (a) The secretary of the Department of Revenue and Regulation may suspend, revoke, or refuse to renew a registration for conduct that would have justified denial of registration under subdivision 59-10-6(b).
- (b) The secretary of the Department of Revenue and Regulation may deny, suspend, revoke, or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing. The secretary shall provide notice of such hearing and any action taken in response to the hearing to the Office of the Secretary of State. The Administrative Procedures Act applies to this chapter.

§ 59-10-8. Temporary registration

The secretary of the Department of Revenue and Regulation may issue a temporary certificate of registration while an application for registration or renewal of registration is pending.

§ 59-10-9. Registration and renewal fees

An application for registration or renewal of registration must be accompanied by a fee in the following amount:

- (1) One hundred dollars for an initial application for registration;
- (2) Fifty dollars for an application for registration based upon a certificate of registration or licensure issued by another state;
- (3) Twenty-five dollars for an application for renewal of registration; or
- (4) Twenty-five dollars for an application for renewal of registration based upon an application for renewal of registration or licensure submitted in another state.

All moneys received pursuant to this section shall be deposited in the state general fund.

§ 59-10-10. Required form of contract

- (a) An agency contract must be in a record, signed or otherwise authenticated by the parties.
- (b) An agency contract must state or 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 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, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND
 - (3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.
- (d) An agency contract that does not conform to this section is voidable by the student-athlete. If a student-athlete voids an agency contract, the student-athlete is not required to pay 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.
- (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.

§ 59-10-11. Notice to educational institution

- (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.

§ 59-10-12. Student-athlete's right to cancel

- (a) A student-athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within fourteen days after the contract is signed.
- (b) A student-athlete may not waive the right to cancel an agency contract.
- (c) If a student-athlete cancels an agency contract, the student-athlete is not required to pay 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.

§ 59-10-13. Required records

- (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) Any agency contract entered into by the athlete agent; and
 - (3) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract.
- (b) Records required by subsection (a) to be retained are open to inspection by the secretary of the Department of Revenue and Regulation during normal business hours.

§ 59-10-14. Prohibited conduct

- (a) An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, may not:
 - (1) Give any 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 any individual other than the student-athlete or another registered athlete agent.
- (b) An athlete agent may not intentionally:
 - (1) Initiate contact with a student-athlete unless registered under this chapter;
 - (2) Refuse or fail to retain or permit inspection of the records required to be retained by § 59-10-13;
 - (3) Fail to register when required by § 59-10-4;
 - (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 before the student-athlete signs or otherwise authenticates an agency contract for a particular sport

that the signing or authentication may make the student-athlete ineligible to participate as a student-athlete in that sport.

§ 59-10-15. Criminal penalties

An athlete agent who violates § 59-10-14 is guilty of a Class 6 felony.

§ 59-10-16. Civil remedies

- (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 under this section, the court may award to the prevailing party costs and reasonable attorney's fees.
- (b) Damages of an educational institution under subsection (a) include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student-athlete, 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 under 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) Any liability of the athlete agent or the former student-athlete under this section is several and not joint.
- (e) This chapter does not restrict rights, remedies, or defenses of any person under law or equity.

§ 59-10-17. Administrative penalty

The secretary of the Department of Revenue and Regulation may assess a civil penalty against an athlete agent not to exceed twenty-five thousand dollars for a violation of this chapter. All moneys received pursuant to this section shall be deposited in the state general fund.

§ 59-10-18. Uniformity of application and construction

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.

§ 59-10-19. Electronic Signatures in Global National Commerce Act

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

§ 59-10-20. Severability

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

TENNESSEE

Tenn. Code Ann. § 49-7-2122 to § 49-7-2141 (2002)

§ 49-7-2122. Short title

This part shall be known and may be cited as the “Uniform Athlete Agents Act of 2001.”

§ 49-7-2123. Part Definitions.

As used in this part, unless the context otherwise requires:

(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 “athlete agent” does not include a spouse, parent, sibling, grandparent or guardian of the student athlete or an individual acting solely on behalf of a professional sports team or professional sports organization;

(3) “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) “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;

(6) “Intercollegiate sport” means a sport played at the collegiate level for which eligibility requirements for participation by a student athlete are

established by a national association for the promotion or regulation of collegiate athletics;

(7) "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;

(8) "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) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(10) "Registration" means registration as an athlete agent pursuant to the provisions of this part;

(11) "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;

(12) (A) "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; and

(B) For the purposes of this part, 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

§ 49-7-2124. Consent to jurisdiction.

- (a) A person who does business in this state as an athlete agent, regardless of whether such person is registered pursuant to this part, shall by so doing consent to the jurisdiction of the courts of this state, shall be subject to suit in this state and shall be deemed to have appointed the secretary of state as such person's agent to accept service of process in any civil action related to such person doing business as an athlete agent that is commenced against such person in this state.
- (b) The secretary of state may issue subpoenas for any material that is relevant to the administration of this part.

§ 49-7-2125. Athlete agents required to register with state—Violation.

- (a) An individual may not act as an athlete agent in this state without holding a certificate of registration under §§ 49-7-2127 or 49-7-2129.

- (b) An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract.

§ 49-7-2126. Application for registration.

- (a) An applicant shall submit an application for registration to the secretary of state in a form prescribed by the secretary of state. An application filed under this section is a public record. The application shall be in the name of an individual and, except as otherwise provided in subsection (b), signed or otherwise authenticated by the applicant under penalty of perjury and shall include:
 - (1) The name of the applicant and the address of the applicant's principal place of business;
 - (2) The name of the applicant's business or employer, if applicable;
 - (3) Any business or occupation engaged in by the applicant for the last five (5) years prior to the date of submission of the application;
 - (4) A description of the applicant's:
 - (A) Formal training as an athlete agent;
 - (B) Practical experience as an athlete agent; and
 - (C) Educational background, including, but not limited to, degrees and courses relating to the applicant's activities as an athlete agent;
 - (5) The names and addresses of three (3) individuals not related to the applicant who are willing to serve as references;
 - (6) The name, sport, and last known team for each individual for whom the applicant acted as an athlete agent during the last five (5) years prior to the date of submission of the application;
 - (7) The names and addresses of all persons who are:
 - (A) With respect to the athlete agent's business, if it is not a corporation, the partners, members, officers, managers, associates, or profit sharers of the business; and
 - (B) With respect to a corporation employing the athlete agent, the officers, directors, and any shareholder of the corporation having an interest of five percent (5%) or greater;
 - (8) Whether the applicant or any person named pursuant to subdivision (a)(7) has been convicted of a crime that, if committed in

this state, would be a crime involving moral turpitude or a felony; if so, the jurisdiction, offense and year of conviction;

- (9) Whether there has been any administrative or judicial determination that the applicant or any person named pursuant to subdivision (a)(7) has made a false, misleading, deceptive, or **fraudulent** representation;
 - (10) Any instance in which the conduct of the applicant or any person named pursuant to subdivision (a)(7) resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in the interscholastic or intercollegiate athletic event by a student athlete or educational institution; if so, the name of the student athlete or educational institution and the year of the sanction, suspension or declaration of ineligibility;
 - (11) Any sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to subdivision (a)(7) arising out of occupational or professional conduct; and
 - (12) Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any person named pursuant to subdivision (a)(7) as an athlete agent in any state; if so, the jurisdiction and year of denial, suspension, revocation or refusal to renew registration.
- (b) An individual who has submitted an application for, and holds a certificate of registration or licensure as an athlete agent in another state, may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to subsection (a). Except as otherwise provided in this part, the secretary of state shall accept the application and the certificate from the other state as an application for registration in this state if the application to the other state:
- (1) Was submitted in the other state within six (6) months of the application submitted 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.

§ 49-7-2127. Issuance of registration—Renewal.

- (a) Except as otherwise provided in subsections (b) and (i), the secretary of state shall issue a certificate of registration to an individual who has submitted the requisite fee in accordance with § 49-7-2130, and has complied with the provisions of § 49-7-2126(a), or whose application has been accepted pursuant to § 49-7-2126(b).
- (b) The secretary of state may refuse to issue a certificate of registration if the secretary of state determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the secretary of state may consider whether the applicant has:
 - (1) Been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony;
 - (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 pursuant to § 49-7-2135;
 - (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 secretary of state 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 the requisite fee in accordance with § 49-7-2130, and by submitting an application for renewal in a form prescribed by the secretary of state. An application filed under this section is public record. 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), upon submission of the requisite fee in accordance with § 49-7-2130, may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. Except as otherwise provided in this part, the secretary of state 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 (6) months of the filing in this state and the applicant certifies that the information contained in the application for renewal is current;
 - (2) Contains information substantially similar to, or more comprehensive than, that required in an application for renewal submitted in this state; and
 - (3) Was signed by the applicant under penalty of perjury.
- (f) A certificate of registration or a renewal of registration is valid for two (2) years.
- (g) Any registration pursuant to this part shall automatically expire, without notice, on the expiration date set forth on the registration.
- (h) A certificate of registration issued to an athlete agent is not transferable.
- (i) (1) Notwithstanding any provision of this part to the contrary, in reviewing an application for registration or a renewal of registration, the secretary of state may request clarifying information from the applicant, including, but not limited to:
 - (A) Information concerning any criminal conviction reported pursuant to § 49-7-2126(a)(8);
 - (B) Information concerning any conduct resulting in sanction, suspension, or declaration of ineligibility of any student-athlete or educational institution reported pursuant to § 49-7-2126(a)(10); and
 - (C) Information concerning denial, suspension or revocation of registration or licensure reported pursuant to § 49-7-2126(12).
- (2) Failure to submit such information within thirty (30) days of such request shall be grounds for denial, revocation, or a refusal to

renew a certificate of registration pursuant to the provisions of this section.

- (3) No person shall act as an athlete agent for any purpose within this state pending submission of such clarifying information. A violation of this subdivision is a Class D felony.

§ 49-7-2128. Suspension or revocation of registration.

- (a) The secretary of state has authority to suspend, revoke or refuse to renew a registration for any conduct that would have justified denial of registration pursuant to § 49-7-2127 or for any one (1) or more violations of this part.
- (b) A violation of this part shall be brought to the attention of the secretary of state by written complaint filed by any educational institution or student athlete aggrieved by the violation. If the secretary of state finds from the complaint that there is reasonable cause to believe a violation of this part has occurred, the secretary of state shall commence an athlete agent registration revocation or suspension proceeding. Such a proceeding shall be considered a contested case hearing and shall be conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

§ 49-7-2129. Temporary certificate of registration.

Except as provided in § 49-7-2127(i), the secretary of state may issue a temporary certificate of registration while an application for registration or renewal of registration is pending.

§ 49-7-2130. Fees.

- (a) An application for registration or renewal of registration shall be accompanied by a fee in the following amount:
 - (1) Five hundred dollars (\$500) for an initial application for registration;
 - (2) Five hundred dollars (\$500) for an application for registration based upon a certificate of registration or licensure issued by another state;
 - (3) Pursuant to § 49-7-2141, two hundred dollars (\$200) for an application for registration based upon a permit in good standing

issued in this state prior to July 1, 2001, at the time for the permit's annual renewal;

- (4) Two hundred dollars (\$200) for an application for renewal of registration; or
 - (5) Two hundred dollars (\$200) for an application for renewal of registration based upon an application for renewal of registration or licensure submitted in another state.
- (b) All fees submitted for registration, or renewal of registration, pursuant to the provisions of this part, are nonrefundable regardless of whether the secretary of state issues or denies registration or renewal of registration.
 - (c) All fees collected pursuant to the provisions of this part shall be used by the secretary of state to defray the costs of administering this part.
 - (d) In addition to the fees provided in subsection (a), an athlete agent, registered pursuant to the provisions of this part, is subject to the provisions of § 67-4-1702.

§ 49-7-2131. Agency contracts—Required language.

- (a) An agency contract shall be in writing and shall be signed, or otherwise authenticated, by the parties in the presence of a notary public who shall duly notarize the same.
- (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;
 - (6) The address of the athlete agent to which notices, including notice of cancellation pursuant to § 49-7-2133, shall be sent; and
 - (7) The date of execution.

- (c) An agency contract shall contain, in at least ten (10) point, bold face type, the following language, which shall be read by the athlete agent to the student athlete and initialed and dated by the student athlete:

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 FORTY-EIGHT (48) HOURS AFTER ENTERING INTO THIS CONTRACT OR BEFORE THE NEXT ATHLETIC EVENT IN WHICH YOU MAY PARTICIPATE, WHICHEVER OCCURS FIRST, BOTH YOU AND YOUR ATHLETE AGENT SHALL NOTIFY YOUR ATHLETIC DIRECTOR; AND
- (3) YOU MAY CANCEL THIS CONTRACT WITHIN TWENTY (20) DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.

[Initials of Student Athlete]

[Date]

- (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.
- (e) A duly signed and notarized copy of the contract shall be furnished to the student athlete at the time of execution.
- (f) Any contract executed pursuant to the provisions of this section shall be governed by the laws of this state.

§ 49-7-2132. Notification requirements.

- (a) (1) Within forty-eight (48) 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 written notice of the existence of the contract, including, but not limited to, a copy of the agency 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.
- (2) A copy of the notice required pursuant to subdivision (a)(1) shall be provided to the educational institution's general counsel.

- (3) If the educational institution does not have an athletic director, the notice required pursuant to subdivision (a)(1) shall be given to the educational institution's general counsel, if known, or to the president of the educational institution.
- (b) Within forty-eight (48) 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 give written notice to the athletic director or the educational institution at which the student athlete is enrolled that the student athlete has entered into an agency contract.
- (c) Failure by the student athlete to provide the notification required pursuant to subsection (b) may subject the student athlete to disciplinary action in accordance with the educational institution's rules and regulations for student conduct.

§ 49-7-2133. Cancellation of contract.

- (a) A student athlete may cancel an agency contract by giving written notice of the cancellation to the athlete agent within twenty (20) days after the contract is signed.
- (b) A student athlete may not under any circumstances effect a waiver of the right to cancel, and any attempted waiver of the right to cancel shall be ineffective.
- (c) If a student athlete cancels 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.

§ 49-7-2134. Business Records.

- (a) An athlete agent shall retain the following records for a period of five (5) years:
 - (1) The name and address of each individual represented by the athlete agent;
 - (2) Any agency contract entered into by the athlete agent; and
 - (3) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student athlete to enter into an agency contract.
- (b) Records required to be retained pursuant to subsection (a) are open to inspection by the secretary of state during normal business hours.

§ 49-7-2135. Improper actions for athlete agents.

- (a) An athlete agent, with the intent to induce a student athlete to enter into any agency contract, shall not:
 - (1) Give any 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 any individual other than the student athlete or another registered athlete agent.
- (b) An athlete agent shall not:
 - (1) Initiate contact with a student athlete, or a student athlete's family and friends, unless registered under this part;
 - (2) Refuse to permit inspection of the records required to be retained pursuant to § 49-7-2134;
 - (3) Fail to retain the records required to be retained pursuant to § 49-7-2134;
 - (4) Fail to register when required pursuant to § 49-7-2125;
 - (5) Provide materially false or misleading information in an application for registration or renewal of registration; or
 - (6) Predate or postdate an agency contract.
- (c) An athlete agent shall not:
 - (1) Fail to notify a student athlete before the student athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student athlete ineligible to participate as a student athlete in that sport;
 - (2) Fail to post the athlete agent's certificate of registration, or legible copy thereof, in each office in this state from which the athlete agent conducts business as an athlete agent; or
 - (3) Fail to provide proof of registration to any student athlete whom the athlete agent contacts.

§ 49-7-2136. Violations—Class E felony.

A violation of any provision of § 49-7-2135 is a Class E felony punishable by a fine of not more than twenty-five thousand dollars (\$25,000) or confinement for not less than one (1) year nor more than six (6) years, or both.

§ 49-7-2137. Legal remedies against violators.

- (a) An educational institution has a right of action against an athlete agent or a current or former student athlete for damages caused by a violation of this part.
- (b) Damages of an educational institution under subsection (a) include, but are not limited to, losses and expenses incurred because, as a result of the conduct of an athlete agent or a current or former student athlete, the educational institution was injured by a violation of this part 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) An educational institution that prevails in a suit brought under this section may recover:
 - (1) Actual damages;
 - (2) Punitive damages;
 - (3) Court costs;
 - (4) Reasonable attorney's fees; and
 - (5) Treble damages for any violation of this part which results in any ineligibility of a student athlete to compete, in an amount equal to three (3) times the value of the athletic scholarship furnished by the institution to the student athlete during the student athlete's period of eligibility.
- (d) An action under this section shall be commenced by the aggrieved institution within three (3) years of the date damages to the institution resulting from a violation of this part are discovered or reasonably should have been discovered, whichever date is sooner.
- (e) If both are at fault, the student athlete and athlete agent shall be jointly and severally liable for any damages awarded to an institution for a violation of the provisions of this part that occurred during such student athlete's period of eligibility.
- (f) This part does not restrict rights, remedies, or defenses of any person under law or equity.

§ 49-7-2138. Civil penalty.

The secretary of state may assess a civil penalty against an athlete agent not to exceed twenty-five thousand dollars (\$25,000) for a violation of this part.

Any hearing on the imposition of any fine pursuant to the provisions of this section shall be in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

§ 49-7-2139. Limitations of part.

Nothing in this part shall:

- (1) Prevent a student athlete from relinquishing such athlete's eligibility to compete in intercollegiate athletics and then signing an agent contract; or
- (2) Impair the validity of an agency contract entered into prior to July 1, 2001.

§ 49-7-2140. Athlete agents registered prior to July 1, 2001.

Any person holding a permit in good standing as a "sports agent" in this state prior to July 1, 2001, shall be deemed an "athlete agent" and subject to the provisions of this part. A permit in good standing shall be valid until the permit's regular annual renewal at which time the agent shall apply for a certificate of registration and shall pay all applicable fees pursuant to § 49-7-2130.

§ 49-7-2141. Legislative intent.

It is the intent of the general assembly that in applying and construing the Uniform Athlete Agents Act of 2001, as compiled in this part, due deference be given to the need to promote uniformity of the law with respect to athlete agents among the several states to the extent consistent with the provisions of this part.

TEXAS

Tex. Occ. Code Ann. § 2051.001 to § 2051.354 (Vernon 2004)

§ 2051.001. Definitions

In this chapter:

(1) “Agent contract” means a contract or an agreement under which an athlete authorizes an athlete agent to negotiate for employment on behalf of the athlete with a professional sports team.

(2) “Athlete” means an individual who:

(A) is eligible to participate in intercollegiate sports contests as a member of a sports team or as an individual competitor in a sport at an institution of higher education; or

(B) has participated as a member of an intercollegiate sports team or as an individual competitor in an intercollegiate sport at an institution of higher education and has never signed an employment contract with a professional sports team.

(3) “Athlete agent” means a person who:

(A) for compensation, directly or indirectly recruits or solicits an athlete to enter into an agent contract, a financial services contract, or a professional sports services contract with that person or another person; or

(B) for a fee, procures, offers, promises, or attempts to obtain employment for an athlete with a professional sports team.

(4) “Financial services contract” means a contract or an agreement under which an athlete authorizes the athlete agent to perform financial services for the athlete, including making and executing investment and other financial decisions for the athlete.

(5) “Institution of higher education” means an institution of higher education or a private or independent institution of higher education, as defined by Section 61.003, Education Code, that is a member of a national association for the promotion and regulation of intercollegiate athletics.

(6) "Schedule of fees" includes the fees and percentages charged by an athlete agent for professional services performed for an athlete.

§ 2051.002. Participation in Intercollegiate Sports Contests

An athlete is not eligible to participate in intercollegiate sports contests if the athlete:

- (1) declares that the athlete is eligible for recruitment by a professional sports team; or
- (2) has concluded, in the athlete's final year of eligibility, the athlete's final intercollegiate sports contest, as determined by the governing body of the national association for the promotion and regulation of intercollegiate athletics of which the athlete's institution of higher education is a member.

§ 2051.003. Effect of Personal Service Contract

In this chapter, a personal service contract between an athlete and the owner or prospective owner of a professional sports team in which the athlete agrees to perform future athletic services constitutes employment with a professional sports team.

§ 2051.004. Athlete Agent Contact

- (a) An athlete agent may contact an athlete only as provided by this chapter.
- (b) Except as provided by Subsection (c), an athlete agent may contact a person who declares that the person is eligible for recruitment by a professional sports team.
- (c) If a person eligible for recruitment by a professional sports team later becomes eligible to participate in intercollegiate sports, an athlete agent may contact the person only as provided by this chapter.

§ 2051.005. Certain Professional Services Exempt

This chapter does not apply to a person who directly or indirectly recruits or solicits an athlete to enter into a contract with the person in which, for compensation, the person performs financial services for the athlete if:

- (1) the person is licensed or registered by the state as:

- (A) a dealer, agent, investment adviser, or investment adviser representative;
 - (B) a real estate broker or salesperson;
 - (C) an insurance agent; or
 - (D) another professional;
- (2) the financial services performed by the person are of a type that are customarily performed by a person licensed in that profession; and
- (3) the person does not:
- (A) recruit or solicit the athlete to enter into an agent contract or a professional services contract on behalf of the person, an affiliate, a related entity, or a third party; or
 - (B) procure, offer, promise, or attempt to obtain for the athlete employment with a professional sports team.

§ 2051.006. Uniformity of Application and Construction

In applying this chapter, consideration must be given to the need to promote uniformity of the law among states that have enacted similar laws.

[Sections 2051.007 to 2051.050 reserved for expansion]

§ 2051.051. Administration of Chapter

- (a) The secretary of state shall:
- (1) actively enforce this chapter;
 - (2) set reasonable and necessary fees for the administration of this chapter; and
 - (3) conduct investigations necessary to ensure compliance with this chapter.
- (b) The secretary may adopt rules necessary to administer this chapter.
- (c) Fees shall be set in an amount to cover the costs of administering this chapter.

§ 2051.052. Publication of Compliance Responsibilities

- (a) The secretary of state shall, at least once a year, publish information that prescribes the compliance responsibilities of an institution of higher education under this chapter.

- (b) The secretary shall mail, return receipt requested, a copy of the compliance responsibilities published under Subsection (a) to the athletic director or other appropriate official of each institution of higher education.
- (c) The secretary shall, as necessary, update the compliance responsibilities materials

[Sections 2051.053 to 2051.100 reserved for expansion]

§ 2051.101. Registration Required

- (a) Except as provided by Subsection (b), a person may not act as an athlete agent in this state or represent that the person is an athlete agent in this state unless the person holds a certificate of registration under this chapter:
- (b) Before the issuance of a certificate of registration under this chapter, a person may act as an athlete agent in this state for all purposes except signing an agent contract, if:
 - (1) an athlete or a person acting on behalf of the athlete initiates communication with the person; and
 - (2) within seven days after the date of the initial act as an athlete agent, the person submits an application for registration under this chapter.
- (c) An agent contract negotiated by an unregistered athlete agent is void.

§ 2051.102. Application Requirements

- (a) Except as provided by Subsection (e), an applicant for registration as an athlete agent must apply on a form prescribed by the secretary of state.
- (b) An applicant must provide information required by the secretary of state, including:
 - (1) the applicant's:
 - (A) name;
 - (B) principal business address;
 - (C) business or occupation for the five years immediately preceding the date of application; and

- (D) formal training, practical experience, and educational background relating to the applicant's professional activities as an athlete agent;
 - (2) the name, sport, and last known team for each person the applicant represented as an athlete agent during the five years immediately preceding the date of application;
 - (3) whether the applicant or a person described by Subdivision (5) has been subject to any of the following:
 - (A) a conviction of a crime that in this state is a felony or a crime of moral turpitude;
 - (B) an administrative or a judicial determination finding the applicant or other person made a false, misleading, deceptive, or **fraudulent** representation;
 - (C) a sanction or suspension related to occupational or professional conduct;
 - (D) a denial of an application for a certificate of registration or license as an athlete agent; or
 - (E) a denial, revocation, or suspension of a certificate of registration or license as an athlete agent;
 - (4) whether the applicant or a person described by Subdivision (5) has engaged in conduct resulting in the imposition on an athlete or educational institution of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event; and
 - (5) except as provided by Subsection (d), the name and address of each person, except a bona fide employee on salary, who is financially interested as a partner, associate, or profit sharer in the applicant's business.
- (c) An application shall include the names and addresses of three professional references.
 - (d) If an applicant is a member of the State Bar of Texas, the application information required under Subsection (b)(5) must include the name and address of each person who is involved in the activities of the athlete agent. This subsection does not require an applicant to state the name and address of a member of a law firm or professional corporation who is not involved in the business of the athlete agent.
 - (e) A person seeking certification as an athlete agent under this chapter who holds a certificate of registration or license as an athlete agent in another state may submit a copy of the previous application and certificate or license instead of submitting the application required by

this section. The secretary of state shall accept the application and the certificate or license from the other state as an application for registration in this state if the application to the other state:

- (1) was submitted to the other state not earlier than the 180th day before the date the application is submitted 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 the information required by this section; and
- (3) was signed by the applicant under penalty of perjury.

§ 2051.103. Corporation, Association, or Partnership Applicant

If an applicant for registration is a corporation, association, or partnership, each officer, associate, or partner, as appropriate, must provide the information required under Section 2051.102.

§ 2051.104. Supplemental Application Requirements

- (a) An applicant for registration that is a corporation, association, partnership, or another entity other than a sole proprietorship or an individual shall attach to the application for registration under Section 2051.102 or the renewal application under Section 2051.108 the name and address of each individual who recruits or solicits an athlete to enter into an agent contract, a financial services contract, or a professional sports services contract with the corporation, association, partnership, or other entity.
- (b) A registered athlete agent that changes the individuals identified under Subsection (a) shall, not later than the 30th day after the date the change is made, file with the secretary of state a statement showing the change.
- (c) The secretary may prescribe forms for the statements required under this section.

§ 2051.105. Denial of Application

- (a) The secretary of state shall deny an application for registration if the applicant has been convicted of:
 - (1) a felony; or
 - (2) a misdemeanor involving moral turpitude.

- (b) The secretary of state may deny an application for registration if the secretary of state determines the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the secretary of state may consider whether the applicant has:
- (1) made a materially false, misleading, deceptive, or **fraudulent** representation in the application or as an athlete agent;
 - (2) engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;
 - (3) engaged in conduct prohibited by Section 2051.351;
 - (4) had a registration or licensure as an athlete agent denied, suspended, or revoked;
 - (5) been denied renewal of registration or licensure as an athlete agent in any state;
 - (6) engaged in conduct that resulted in the imposition on an 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 adversely reflects on the applicant's credibility, honesty, or integrity.
- (c) In making a determination under Subsection (b), the secretary of state 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) Judicial review of a denial of an application for registration under Subsection (a) or (b) is by trial de novo and is subject to Section 2001.173, Government Code.

§ 2051.106. Temporary or Provisional Registration

The secretary of state may issue a temporary or provisional certificate of registration that is valid for not more than 90 days to an applicant for registration or renewal of registration if the applicant's application has been made and the registration process has not been completed.

§ 2051.107. Registration Duration; Expiration

- (a) Except as provided by Subsection (b), a certificate of registration issued under this chapter is valid for a period of not more than one year from the date of issuance.
- (b) The secretary of state, by rule, may adopt a system under which certificates of registration expire on various dates during the year.

§ 2051.108. Registration Renewal

- (a) Except as provided by Subsection (e), an applicant for renewal of registration must apply on a form prescribed by the secretary of state.
- (b) A renewal application must include:
 - (1) the name and address of each athlete for whom the athlete agent is performing professional services for compensation on the date of the renewal application;
 - (2) the name and address of each athlete for whom the athlete agent has performed professional services for compensation during the three years immediately preceding the date of the renewal application but for whom the athlete agent is not performing professional services on the date of the renewal application; and
 - (3) any other information prescribed by the secretary of state.
- (c) A renewal application under this section must be accompanied by an appropriate renewal fee.
- (d) If a certificate of registration expires earlier than the anniversary of the date of issuance, the renewal fee that must accompany a renewal application under this section shall be prorated according to the number of months that the registration is valid.
- (e) A person who has submitted an application for renewal of registration or licensure as an athlete agent in another state may submit a copy of the application and certificate of registration or license from the other state instead of submitting the application required by this section. The secretary of state shall accept the application for renewal from the other state as an application for renewal under this section if the application to the other state:
 - (1) was submitted to the other state not earlier than the 180th day before the date the renewal application is submitted 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 the information required by this section; and
- (3) was signed by the applicant under penalty of perjury.

[Sections 2051.109 to 2051.150 reserved for expansion]

§ 2051.151. Bond Deposit

- (a) An athlete agent shall, before entering into a financial services contract with an athlete, deposit with the secretary of state a surety bond, in the amount of \$100,000, payable to the state and conditioned on:
 - (1) the athlete agent complying with this chapter;
 - (2) the payment of money owed to an individual or group of individuals when the athlete agent or the athlete agent's representative or agent receives the money; and
 - (3) the payment of damages to an athlete caused by the intentional misrepresentation, **fraud**, deceit, or unlawful or negligent act or omission of the athlete agent or of the athlete agent's representative or employee while acting within the scope of the financial services contract.
- (b) An athlete agent shall maintain a bond deposited under Subsection (a) for not less than two years after the date that the athlete agent ceases to provide financial services to an athlete.
- (c) This section does not limit the amount of damages recoverable in a suit filed against an athlete agent to the amount of the bond.

§ 2051.152. Cancellation of Bond; Suspension of Certificate

- (a) Not later than the 30th day after the date an athlete agent receives a notice of cancellation from the surety of a bond deposited under Section 2051.151, the athlete agent shall file a new bond with the secretary of state.
- (b) The secretary shall suspend the certificate of registration of an athlete agent who fails to file a new bond as required by Subsection (a) until a new bond is filed.

§ 2051.153. Exemption From Bond Requirements for Agent Only Contracts

This subchapter does not apply to an athlete agent who enters into only an agent contract with an athlete.

[Sections 2051.154 to 2051.200 reserved for expansion]

§ 2051.201. Contract Form

A registered athlete agent must use a form approved by the secretary of state for any agent contract or financial services contract.

§ 2051.202. Contract Signing

An athlete may sign an athlete agent contract at any time as permitted by the national association for the promotion and regulation of intercollegiate athletics of which the athlete's institution of higher education is a member.

§ 2051.203. Contract Requirements Relating to Fees and Services

- (a) An agent contract or a financial services contract must include:
 - (1) a schedule of fees, including:
 - (A) the amount and method of computing the consideration to be paid by the athlete for services to be provided by the athlete agent under the contract; and
 - (B) any other consideration the athlete agent received or will receive from any other source for entering into the contract or for providing the services;
 - (2) a description of the professional services that the athlete agent will perform for the athlete;
 - (3) the name of any person not listed in the application for registration or renewal of registration who will be compensated because the athlete signed the agent contract;
 - (4) a description of any expenses of the athlete agent the athlete agrees to reimburse;
 - (5) the duration of the contract; and
 - (6) the date the contract was signed.

- (b) A registered athlete agent may charge a fee only as provided by the schedule of fees in the contract.
- (c) A change in the schedule of fees in a contract takes effect on the seventh day after the date on which the athlete agent files with the secretary of state a copy of the contract as required by Section 2051.205(b).
- (d) The athlete agent shall give a signed copy of the contract to the athlete at the time the contract is signed.

§ 2051.204. Contract Requirements Relating to Notice

(a) An agent contract or a financial services contract must include the following notice:

- (1) THIS ATHLETE AGENT IS REGISTERED WITH THE SECRETARY OF STATE OF THE STATE OF TEXAS. REGISTRATION WITH THE SECRETARY OF STATE DOES NOT IMPLY APPROVAL OR ENDORSEMENT BY THE SECRETARY OF STATE OF THE COMPETENCE OF THE ATHLETE AGENT OR OF THE SPECIFIC TERMS AND CONDITIONS OF THIS CONTRACT.

NOTICE TO CLIENT

- (2) DO NOT SIGN THIS CONTRACT UNTIL YOU HAVE READ IT OR IF IT CONTAINS BLANK SPACES.
- (3) IF YOU DECIDE THAT YOU DO NOT WISH TO PURCHASE THE SERVICES OF THE ATHLETE AGENT, YOU MAY CANCEL THIS CONTRACT BY NOTIFYING THE ATHLETE AGENT IN WRITING OF YOUR DESIRE TO CANCEL THE CONTRACT NOT LATER THAN THE 16TH DAY AFTER THE DATE ON WHICH YOU SIGN THIS CONTRACT. YOU MAY NOT WAIVE THE RIGHT TO CANCEL THIS CONTRACT. IF YOU CANCEL THIS CONTRACT WITHIN 16 DAYS, YOU ARE NOT REQUIRED TO PAY ANY CONSIDERATION UNDER THE CONTRACT OR RETURN ANY CONSIDERATION RECEIVED.
- (4) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS AN ATHLETE IN YOUR SPORT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.
- (5) 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.

- (b) The notice required under Subsection (a) must be:
 - (1) printed in not less than 10-point typeface; and
 - (2) boldfaced, capitalized, underlined, or otherwise set apart from the surrounding provisions of the contract to make the notice conspicuous.

§ 2051.205. Filing Requirements

- (a) A registered athlete agent shall, not later than the fifth day after the date an athlete signs an agent contract or financial services contract, file a copy of the contract with:
 - (1) the secretary of state; and
 - (2) if the athlete is a student at an institution of higher education, the athletic director of the athlete's institution.
- (b) If the schedule of fees in an agent or financial services contract is changed, the athlete agent shall file with the secretary a copy of the changed contract.

§ 2051.206. Multiyear Contract Fee

- (a) This section applies only to a multiyear professional sports services contract negotiated by a registered athlete agent.
- (b) A registered athlete agent may not collect during a 12-month period a fee that exceeds the amount an athlete will receive during that same 12-month period under the professional sports services contract negotiated by the athlete agent.

[Sections 2051.207 to 2051.250 reserved for expansion]

§ 2051.251. Adoption of Implementation Standards

- (a) An institution of higher education shall adopt standards relating to the implementation of this chapter, including specific guidelines governing the athlete agent interview program sponsored by the institution under Section 2051.301.
- (b) Guidelines adopted under Subsection (a) relating to the athlete agent interview program must specify:
 - (1) the scheduling of interview periods;
 - (2) the duration of an interview period;

- (3) the location on the institution's campus for conducting interviews; and
- (4) any terms or conditions under which an athlete agent may contact an athlete during an interview period.

§ 2051.252. Approval and Filing of Standards

- (a) After adopting implementation standards under Section 2051.251, an institution of higher education shall:
 - (1) submit the standards to the institution's athletic council or other analogous body for approval; and
 - (2) file a copy of the approved standards with the secretary of state not later than the 30th day after the date the standards are approved under Subdivision (1).
- (b) If an institution of higher education amends the implementation standards, the institution shall, not later than the 30th day after the date the amendment is effective, file a copy of the amended standards with the secretary.

§ 2051.253. Designation of Compliance Coordinator

An institution of higher education shall:

- (1) designate an individual to serve as a compliance coordinator for that institution; and
- (2) report the name of the compliance coordinator to the secretary of state in a manner prescribed by the secretary.

§ 2051.254. Written Request for Implementation Standards

On receipt of a written request from a registered athlete agent, the secretary of state or a compliance coordinator designated under Section 2051.253 shall provide a copy of the implementation standards adopted by an institution of higher education under Section 2051.251.

§ 2051.255. Notification of Availability of Implementation Standards

- (a) The secretary of state shall notify each registered athlete agent in writing of the availability, on request, under Section 2051.254 of a copy of the implementation standards of each institution of higher education.

- (b) Notice under Subsection (a) must include a statement that:
 - (1) the standards adopted by an institution of higher education specify the policies of that institution relating to the time, place, and duration of athlete agent interviews conducted on the institution's campus; and
 - (2) each institution of higher education has a designated compliance coordinator who the athlete agent may contact for additional information.

§ 2051.256. Written Request for Compliance Coordinators

On receipt of a written request from a registered athlete agent, the secretary of state shall provide a copy of the names of the compliance coordinators designated under Section 2051.253.

[Sections 2051.257 to 2051.300 reserved for expansion]

§ 2051.301. Athlete Agent Interview Program

- (a) Each institution of higher education shall sponsor an athlete agent interview program on the institution's campus.
- (b) A registered athlete agent may interview an athlete during an interview program to discuss:
 - (1) financial services and advice offered by the athlete agent; and
 - (2) the athlete agent's representation of the athlete relating to marketing the athlete's athletic ability and reputation.
- (c) The compliance coordinator or secretary of state shall, not later than the 30th day before the date on which an interview program sponsored under this section begins, notify each registered athlete agent in writing of the interview program.

§ 2051.302. Compliance Coordinator's Duties

Each compliance coordinator designated under Section 2051.253 shall:

- (1) establish the schedule for the athlete agent interview program sponsored under Section 2051.301 by the coordinator's institution of higher education;
- (2) not later than the 30th day before the date on which the athlete agent interview program begins, notify each registered athlete

- agent, in writing, of the interview program, unless the secretary of state provides notification under Section 2051.301(c); and
- (3) ensure that the coordinator's institution of higher education and the athletes attending the institution comply with this chapter and the rules adopted under this chapter.

§ 2051.303. Time and Duration of Interview Program

An athlete agent interview program sponsored under this subchapter:

- (1) may not continue for more than 30 consecutive business days as determined by the athlete's institution of higher education; and
- (2) must be conducted during the off-season period before the completion of the athlete's final year of eligibility.

§ 2051.304. Compliance With Interview Guidelines

An athlete agent shall strictly comply with the guidelines adopted under Section 2051.251 relating to the time, place, and duration of an athlete agent interview program.

[Sections 2051.305 to 2051.350 reserved for expansion]

§ 2051.351. Prohibitions

- (a) An athlete agent may not:
 - (1) publish or cause to be published:
 - (A) false, **fraudulent**, or misleading information; or
 - (B) a false, **fraudulent**, or misleading:
 - (i) representation;
 - (ii) notice; or
 - (iii) advertisement;
 - (2) provide false information;
 - (3) make a false promise or representation relating to employment;
 - (4) divide fees with or receive compensation from:
 - (A) a person exempt from registration under this chapter under Section 2051.005; or
 - (B) a professional sports league or franchise, including a representative or employee of the league or franchise;

- (5) enter into a written or oral agreement with an employee of an institution of higher education in which the athlete agent offers a thing of value to the employee for the referral of clients by the employee;
 - (6) offer a thing of value to induce the athlete to enter into an agreement with the athlete agent in which the athlete agent will represent the athlete;
 - (7) except as provided by this chapter, before an athlete completes the athlete's last intercollegiate sports contest:
 - (A) directly contact the athlete; or
 - (B) enter into an oral or written agreement with the athlete for the athlete agent to represent the athlete;
 - (8) furnish anything of value to any person other than the athlete or another registered athlete agent to induce an athlete to enter into an agreement with the athlete agent;
 - (9) initiate any contact with an athlete, except as authorized by this chapter;
 - (10) fail to retain or permit inspection of the records required to be retained by Section 2051.352;
 - (11) predate or postdate an agent contract; or
 - (12) fail to notify an athlete before the athlete signs an agent contract that the signing may make the athlete ineligible to participate in intercollegiate sports.
- (b) This section does not prohibit:
- (1) an athlete agent from sending written materials to an athlete relating to the professional credentials or services of the athlete agent if the athlete agent simultaneously sends a copy of the materials to the athletic director of the athlete's institution of higher education or the athletic director's designee; or
 - (2) an athlete or an athlete's parent or legal guardian from contacting an athlete agent to schedule a meeting with the athlete agent to assess:
 - (A) the agent's professional proficiency in:
 - (i) representing the athlete; or
 - (ii) marketing the athlete's athletic ability or reputation; or
 - (B) the financial services offered by the athlete agent.
- (c) If an athlete agent is contacted by an athlete or the athlete's parent or legal guardian to schedule a meeting to discuss the services offered by

the athlete agent, the athlete agent shall, before meeting with the athlete or the athlete's parent or legal guardian, notify the athletic director of the athlete's institution of higher education or the athletic director's designee of the proposed meeting.

§ 2051.352. Recordkeeping Requirement

- (a) An athlete agent shall maintain a record of:
 - (1) each athlete represented by the athlete agent, including:
 - (A) the name and address of the athlete;
 - (B) fees paid by the athlete; and
 - (C) services performed by the athlete agent for the athlete;
 - (2) travel and entertainment expenses incurred by the athlete agent, including expenses for:
 - (A) food and beverages;
 - (B) hospitality rooms;
 - (C) sporting events;
 - (D) theater and music events; and
 - (E) transportation, lodging, and admission relating to entertainment;
 - (3) any agent contract entered into by the athlete agent; and
 - (4) any direct costs incurred by the athlete agent in recruiting or soliciting an athlete to enter into an agent contract.
- (b) A record of travel and entertainment expenses maintained under Subsection (a)(2) must state:
 - (1) the nature of the expense;
 - (2) the amount of the expense;
 - (3) the purpose of the expense;
 - (4) the date and place of the expense; and
 - (5) the name of each person on whose behalf the expenditure was made.
- (c) An athlete agent shall provide a copy of a record maintained under this section to the secretary of state on request.

§ 2051.353. Disclosure Requirement

An athlete agent shall disclose the athlete agent's name and address in any advertising used by the athlete agent

§ 2051.354. Agent Liability for Violation of Chapter

A registered or unregistered athlete agent who violates this chapter may be subject to:

- (1) an administrative penalty imposed under Subchapter J; [FN1]
- (2) forfeiture of the right to payment for a thing of value that the athlete agent gives to an athlete to induce the athlete to enter into a contract;
- (3) a refund of consideration paid to the athlete agent; and
- (4) payment of reasonable attorney's fees and court costs incurred by an athlete who files suit against an athlete agent for violation of this chapter.

UTAH

Utah Code Ann. § 15-9-101 to § 15-9-119 (2005)

§ 15-9-101. Title.

This chapter is known as the “Uniform Athlete Agents Act.”

§ 15-9-102. Definitions.

As used 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, or grandparent of the student-athlete or an individual acting solely on behalf of a professional sports team or professional sports organization.

(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) “Division” means the Division of Occupational and Professional Licensing created in Section 58-1-103.

(6) “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.

(7) "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.

(8) "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.

(9) "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.

(10) "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.

(11) "Registration" means registration as an athlete agent pursuant to this chapter.

(12) "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.

(13) "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.

§ 15-9-103. Administration—Rulemaking—Service of process—Athlete Agents Licensing Board.

- (1) (a) This chapter shall be administered by the Division of Occupational and Professional Licensing and is subject to the requirements of Title 58, Chapter 1, Division of Occupational and Professional Licensing Act, so long as the requirements of Title 58, Chapter 1, are not inconsistent with the requirements of this chapter.
 - (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the division may make rules necessary to implement the provisions of this chapter.
- (2) By acting as an athlete agent in this state, a nonresident individual appoints the director of the division as the individual's agent for ser-

vice of process in any civil action in this state related to the individual's acting as an athlete agent in this state.

- (3) (a) There is created the Athlete Agents Licensing Board consisting of four athlete agents and one member of the general public.
- (b) The Athlete Agents Licensing Board shall be appointed and serve in accordance with Section 58-1-201.
- (c) The duties and responsibilities of the Athlete Agents Licensing Board are in accordance with Sections 58-1-202 and 58-1-203.
- (d) In addition, the Athlete Agents Licensing Board shall designate one of its members on a permanent or rotating basis to:
 - (i) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and
 - (ii) advise the division in its investigation of these complaints.
- (e) A member of the Athlete Agents Licensing Board who has, under Subsection (3)(d), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

§ 15-9-104. Athlete agents—Registration required—Void contracts.

- (1) Except as otherwise provided in Subsection (2), an individual may not act as an athlete agent in this state without holding a certificate of registration under Section 15-9-106 or 15-9-108.
- (2) Before being issued a certificate of registration, an individual may act as an athlete agent in this state for all purposes except signing an agency contract, if:
 - (a) a student-athlete or another person acting on behalf of the student-athlete initiates communication with the individual; and
 - (b) within seven days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in this state.
- (3) An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract.

§ 15-9-105. Registration as an athlete agent—Form—Requirements.

- (1) An applicant for registration shall submit an application for registration to the division in a form prescribed by the division. An application filed under this section is a public record under Title 63, Chapter 2, Government Records Access and Management Act. The application must be in the name of an individual and, except as otherwise provided in Subsection (2), signed or otherwise authenticated by the applicant under penalty of perjury and state or contain:
 - (a) the name of the applicant and the address of the applicant's principal place of business;
 - (b) the name of the applicant's business or employer, if applicable;
 - (c) any business or occupation engaged in by the applicant for the five years immediately preceding the date of submission of the application;
 - (d) 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;
 - (e) the names and addresses of three individuals not related to the applicant who are willing to serve as references;
 - (f) 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;
 - (g) the names and addresses of all persons who are:
 - (i) with respect to the athlete agent's business if it is not a corporation, the partners, members, officers, managers, associates, or profit-sharers of the business; and
 - (ii) with respect to a corporation employing the athlete agent, the officers, directors, and any shareholder of the corporation having an interest of 5% or greater;
 - (h) whether the applicant or any person named pursuant to Subsection (1)(g) has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony, and identify the crime;
 - (i) whether there has been any administrative or judicial determination that the applicant or any person named pursuant to Subsec-

tion (1)(g) has made a false, misleading, deceptive, or **fraudulent** representation;

- (j) any instance in which the conduct of the applicant or any person named pursuant to Subsection (1)(g) resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or educational institution;
 - (k) any sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to Subsection (1)(g) arising out of occupational or professional conduct; and
 - (l) whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any person named pursuant to Subsection (1)(g) as an athlete agent in any state.
- (2) An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another state, may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to Subsection (1). The division shall accept the application and the certificate from the other state as an application for registration in this state if the application to the other state:
- (a) was submitted in the other state within six months immediately preceding the submission of the application in this state and the applicant certifies that the information contained in the application is current;
 - (b) contains information substantially similar to or more comprehensive than that required in an application submitted in this state; and
 - (c) was signed by the applicant under penalty of perjury.

§ 15-9-106. Certificate of registration—Issuance or denial—Renewal.

- (1) Except as otherwise provided in Subsection (2), the division shall issue a certificate of registration to an individual who complies with Subsection 15-9-105(1) or whose application has been accepted under Subsection 15-9-105(2).
- (2) The division may refuse to issue a certificate of registration if the division determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an

athlete agent. In making the determination, the division may consider whether the applicant has:

- (a) been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony;
 - (b) made a materially false, misleading, deceptive, or **fraudulent** representation in the application or as an athlete agent;
 - (c) engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;
 - (d) engaged in conduct prohibited by Section 15-9-114;
 - (e) 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;
 - (f) 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
 - (g) engaged in conduct that significantly, adversely reflects on the applicant's credibility, honesty, or integrity.
- (3) In making a determination under Subsection (2), the division shall consider:
- (a) how recently the conduct occurred;
 - (b) the nature of the conduct and the context in which it occurred; and
 - (c) any other relevant conduct of the applicant.
- (4) An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the division. An application filed under this section is a public record under Title 63, Chapter 2, Government Records Access and Management Act. 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.
- (5) 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 (4), may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. The division 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:

- (a) was submitted in the other state within six months immediately preceding the filing in this state and the applicant certifies the information contained in the application for renewal is current;
 - (b) contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this state; and
 - (c) was signed by the applicant under penalty of perjury.
- (6) A certificate of registration or a renewal of a registration is valid for two years.

§ 15-9-107. Suspension, revocation, or refusal to renew registration.

- (1) The division may suspend, revoke, or refuse to renew a registration for conduct that would have justified denial of registration under Subsection 15-9- 106(2).
- (2) The division may suspend, revoke, or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing. Title 63, Chapter 46b, Administrative Procedures Act, applies to this chapter.

§ 15-9-108. Temporary registration.

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

§ 15-9-109. Registration and renewal fees.

- (1) An application for registration or renewal of registration must be accompanied by a fee in an amount determined by the division in accordance with Section 63-38-3.2.
- (2) The division shall establish fees for:
 - (a) an initial application for registration;
 - (b) an application for registration based upon a certificate of registration or licensure issued by another state;
 - (c) an application for renewal of registration; and
 - (d) an application for renewal of registration based upon an application for renewal of registration or licensure submitted in another state.

§ 15-9-110. Required form of contract.

- (1) An agency contract must be in a record, signed or otherwise authenticated by the parties.
- (2) An agency contract must state or contain:
 - (a) 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;
 - (b) 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;
 - (c) a description of any expenses that the student-athlete agrees to reimburse;
 - (d) a description of the services to be provided to the student-athlete;
 - (e) the duration of the contract; and
 - (f) the date of execution.
- (3) 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, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND**
 - (3) **YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.**
- (4) 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.
- (5) The athlete agent shall give a record of the signed or otherwise authenticated agency contract to the student-athlete at the time of execution.

§ 15-9-111. Notice to educational institution.

- (1) Within 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 the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.
- (2) Within 72 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.

§ 15-9-112. Student-athlete's right to cancel.

- (1) A student-athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within 14 days after the contract is signed.
- (2) A student-athlete may not waive the right to cancel an agency contract.
- (3) If a student-athlete cancels 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.

§ 15-9-113. Required records.

- (1) An athlete agent shall retain the following records for a period of five years:
 - (a) the name and address of each individual represented by the athlete agent;
 - (b) any agency contract entered into by the athlete agent; and
 - (c) any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract.
- (2) Records required by Subsection (1) to be retained are open to inspection by the division during normal business hours.

§ 15-9-114. Prohibited conduct.

- (1) An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, may not:
 - (a) give any materially false or misleading information or make a materially false promise or representation;
 - (b) furnish anything of value to a student-athlete before the student-athlete enters into the agency contract; or
 - (c) furnish anything of value to any individual other than the student-athlete or another registered athlete agent.
- (2) An athlete agent may not intentionally:
 - (a) initiate contact with a student-athlete unless registered under this chapter;
 - (b) refuse or fail to retain or permit inspection of the records required to be retained by Section 15-9-113;
 - (c) fail to register when required by Section 15-9-104;
 - (d) provide materially false or misleading information in an application for registration or renewal of registration;
 - (e) predate or postdate an agency contract; or
 - (f) fail to notify a student-athlete before the student-athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate as a student-athlete in that sport.

§ 15-9-115. Criminal penalties.

An athlete agent who violates Section 15-9-114 is guilty of a class A misdemeanor.

§ 15-9-116. Civil remedies.

- (1) 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 under this section, the court may award to the prevailing party costs and reasonable attorney's fees.
- (2) Damages of an educational institution under Subsection (1) include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student-athlete, 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.

- (3) A right of action under 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.
- 4) Any liability of the athlete agent or the former student-athlete under this section is several and not joint.
- (5) This chapter does not restrict rights, remedies, or defenses of any person under law or equity.

§ 15-9-117. Civil and administrative penalty.

- (1) The division may assess a civil penalty against an athlete agent not to exceed \$25,000 for a violation of this chapter.
- (2) An administrative penalty collected under Subsection (1) shall be deposited into the Commerce Service Fund created in Section 13-1-2

§ 15-9-118. Uniformity of application and construction.

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.

§ 15-9-119. Electronic Signatures in Global and National Commerce Act.

The provisions of this chapter governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000) [FN1], and supersede, modify, and limit the Electronic Signatures in Global and National Commerce Act.

VIRGIN ISLANDS

V.I. Code Ann. tit. 17, § 651 to § 670 (Supp. 2006)

§ 651. Short title

This chapter may be cited as the Uniform Athlete Agents Act.

§ 652. Definitions

In this chapter, the term

(a) “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.

(b) “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.

(c) “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.

(d) “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.

(e) “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.

(f) “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.

(g) "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.

(h) "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.

(i) "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.

(j) "registration" means registration as an athlete agent pursuant to this chapter.

(k) "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.

(l) "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.

§ 653. Service of process; subpoenas

- (a) By acting as an athlete agent in this State, a nonresident individual appoints the Lieutenant Governor as the individual's agent for service of process in any civil action in this State related to the individual's acting as an athlete agent in this State.
- (b) The Lieutenant Governor may issue subpoenas for any material that is relevant to the administration of this chapter.

§ 654. Athlete agents: registration required; void contracts

- (a) Except as otherwise provided in subsection (b), an individual may not act as an athlete agent in this State without holding a certificate of registration under section 656 or 658 of this title.
- (b) Before being issued a certificate of registration, an individual may act as an athlete agent in this State for all purposes except signing an agency contract, if:

- (1) a student-athlete or another person acting on behalf of the student athlete initiates communication with the individual; and
 - (2) within seven days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in this State.
- (c) An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract.

§ 655. Registration as athlete agent; form; requirements

- (a) An applicant for registration shall submit an application for registration to the Lieutenant Governor in a form prescribed by the Lieutenant Governor. An application filed under this section is a public record under title 3, chapter 33 of the Virgin Islands Code. The application must be in the name of an individual 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 of the applicant and the address of the applicant's principal place of business;
 - (2) the name of the applicant's business or employer, if applicable;
 - (3) any business or occupation engaged in by the applicant for the five years next preceding the date of submission of the application;
 - (4) a description of the applicant's:
 - (A) formal training as an athlete agent;
 - (B) practical experience as an athlete agent; and
 - (C) educational background relating to the applicant's activities as an athlete agent;
 - (5) the names and addresses of three individuals not related to the applicant who are willing to serve as references;
 - (6) the name, sport, and last known team for each individual for whom the applicant acted as an athlete agent during the five years next preceding the date of submission of the application;
 - (7) the names and addresses of all persons who are:
 - (A) with respect to the athlete agent's business if it is not a corporation, the partners, members, officers, managers, associates, or profit-sharers of the business; and

- (B) with respect to a corporation employing the athlete agent, the officers, directors, and any shareholder of the corporation having an interest of five percent or greater;
 - (8) whether the applicant or any person named pursuant to paragraph (7) has been convicted of a crime that, if committed in this State, would be a crime involving moral turpitude or a felony, and identify the crime;
 - (9) whether there has been any administrative or judicial determination that the applicant or any person named pursuant to paragraph (7) has made a false, misleading, deceptive, or **fraudulent** representation;
 - (10) any instance in which the conduct of the applicant or any person named pursuant to paragraph (7) resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or educational institution;
 - (11) any sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to paragraph (7) arising out of occupational or professional conduct; and
 - (12) whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any person named pursuant to paragraph (7) as an athlete agent in any State.
- (b) An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another State, may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to subsection (a). The Lieutenant Governor shall accept the application and the certificate from the other State as an application for registration in this State if the application to the other State:
- (1) was submitted in the other State within six months next preceding the submission of the application in this State and the applicant certifies that the information contained in the application is current;
 - (2) contains information substantially similar to or more comprehensive than that required in an application submitted in this State; and
 - (3) was signed by the applicant under penalty of perjury.

§ 656. Certificate of registration; issuance or denial; renewal

- (a) Except as otherwise provided in subsection (b), the Lieutenant Governor shall issue a certificate of registration to an individual who complies with Section 655(a) or whose application has been accepted under section 655(b) of this chapter.
- (b) The Lieutenant Governor may refuse to issue a certificate of registration if the Lieutenant Governor determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the Lieutenant Governor may consider whether the applicant has:
 - (1) been convicted of a crime that, if committed in this State, would be a crime involving moral turpitude or a felony;
 - (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 664 of this chapter;
 - (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 Lieutenant Governor 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 Lieutenant Governor. An application filed under 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) 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 Lieutenant Governor shall accept the application for renewal from the other State as an application for renewal in this State if the application to the other State:
 - (1) was submitted in the other State within six months next preceding the filing in this State and the applicant certifies the information contained in the application for renewal is current;
 - (2) contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this State; and
 - (3) was signed by the applicant under penalty of perjury.
- (f) A certificate of registration or a renewal of a registration is valid for [two] years.

§ 657. Suspension, revocation, or refusal to renew registration

- (a) The Lieutenant Governor may suspend, revoke, or refuse to renew a registration for conduct that would have justified denial of registration under section 656(b).
- (b) The Lieutenant Governor may deny, suspend, revoke, or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing.

§ 658. Temporary registration

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

§ 659. Registration and renewal fees

An application for registration or renewal of registration must be accompanied by a fee in the following amount:

- (1) \$350 for an initial application for registration;
- (2) \$200 for an application for registration based upon a certificate of registration or licensure issued by another State;
- (3) \$200 for an application for renewal of registration; or

- (4) \$200 for an application for renewal of registration based upon an application for renewal of registration or licensure submitted in another State.

§ 660. Required form of contract

- (a) An agency contract must be in a record, signed or otherwise authenticated by the parties.
- (b) An agency contract must state or 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 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, WITHIN 72
HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH
YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR
ATHLETIC DIRECTOR; AND
(3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS
AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT
MAY NOT REINSTATE YOUR ELIGIBILITY.”**
- (d) An agency contract that does not conform to this section is voidable by the student-athlete. If a student-athlete voids an agency contract, the student-athlete is not required to pay 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.

- (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.

§ 661. Notice to educational institution

- (a) Within 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 the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.
- (b) Within 72 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.

§ 662. Student-athlete's right to cancel

- (a) A student-athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within 14 days after the contract is signed.
- (b) A student-athlete may not waive the right to cancel an agency contract.
- (c) If a student-athlete cancels an agency contract, the student-athlete is not required to pay 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.

§ 663. Required records

- (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) any agency contract entered into by the athlete agent; and

- (3) any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract.
- (b) Records required by subsection (a) to be retained are open to inspection by the Lieutenant Governor during normal business hours.

§ 664. Prohibited conduct

- (a) An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, may not:
 - (1) give any 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 any individual other than the student-athlete or another registered athlete agent.
- (b) An athlete agent may not intentionally:
 - (1) initiate contact with a student-athlete unless registered under this chapter;
 - (2) refuse or fail to retain or permit inspection of the records required to be retained by section 663 of this chapter;
 - (3) fail to register when required by section 654 of this chapter;
 - (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 before the student-athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate as a student-athlete in that sport.

§ 665. Criminal penalties

An athlete agent who violates section 664 is guilty of a felony and, upon conviction, is punishable by a fine of not more than \$15,000 and imprisonment for not more than five years, or both fine and imprisonment.

§ 666. Civil remedies

- (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 under this section, the court may award to the prevailing party costs and reasonable attorney's fees.

- (b) Damages of an educational institution under subsection (a) include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student-athlete, 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 under 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) Any liability of the athlete agent or the former student-athlete under this section is several and not joint.
- (e) This section does not restrict rights, remedies, or defenses of any person under law or equity.

§ 667. Administrative penalty

The Lieutenant Governor may assess a civil penalty against an athlete agent not to exceed \$25,000 for a violation of this chapter after the violating athlete agent has been given the opportunity for a hearing on the record before the Lieutenant Governor or his designee and in making the penalty assessment, the Lieutenant Governor has made findings of fact and conclusions of law.

§ 668. Uniformity of application and construction

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.

§ 669. Electronic Signatures in Global and National Commerce Act

The provisions of this chapter governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000), and

supersede, modify, and limit the Electronic Signatures in Global and National Commerce Act.

§ 670. Severability

If any provision of this chapter or its application to any person or circumstance is held valid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

WASHINGTON

Wash. Rev. Code Ann. § 19.225.010 to § 19.225.903 (West Supp. 2006)

UNIFORM ATHLETE AGENTS ACT

§ 19.225.010. Definitions

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 does not include a spouse, parent, sibling, grandparent, or legal guardian of the student-athlete or an individual acting solely on behalf of a professional sports team or professional sports organization. The term includes an individual who represents to the public that the individual is an athlete agent.

(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) “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.

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

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

(8) "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) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(10) "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.

(11) "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.

§ 19.225.020. Service of process

By engaging in the business of an athlete agent in this state, a nonresident individual appoints the secretary of state as the individual's agent to accept service of process in any civil action related to the individual's business as an athlete agent in this state.

§ 19.225.030. Athlete agents—Delivery of disclosure form required

- (1) Except as otherwise provided in subsection (2) of this section, an individual may not act as an athlete agent in this state unless on the day of initial contact with any student-athlete the athlete agent delivers to the student-athlete the athlete agent disclosure form as required by RCW 19.225.040.
- (2) An individual may act as an athlete agent before delivering an athlete agent disclosure form for all purposes except signing an agency contract if:
 - (a) A student-athlete or another acting on behalf of the student-athlete initiates communication with the individual; and

- (b) Within seven days after an initial act as an athlete agent, the individual delivers an athlete agent disclosure form to the student-athlete.
- (3) An agency contract resulting from conduct in violation of this section is void. The athlete agent shall return any consideration received under the contract.

§ 19.225.040. Athlete agent disclosure form—Requirements

- (1) The athlete agent disclosure form must be in a record executed in the name of an individual and signed by the athlete agent under penalty of perjury and, except as otherwise provided in subsection (2) of this section, must state or contain:
 - (a) The name of the athlete agent and the address of the athlete agent's principal place of business;
 - (b) The name of the athlete agent's business or employer, if applicable;
 - (c) Any business or occupation engaged in by the athlete agent for the five years next preceding the date of execution of the athlete agent disclosure form;
 - (d) A description of the athlete agent's:
 - (i) Formal training as an athlete agent;
 - (ii) Practical experience as an athlete agent; and
 - (iii) Educational background relating to the athlete agent's activities as an athlete agent;
 - (e) The names and addresses of three individuals not related to the athlete agent who are willing to serve as references;
 - (f) The name, sport, and last known team for each individual for whom the athlete agent provided services as an athlete agent during the five years next preceding the date of execution of the athlete agent disclosure form;
 - (g) The names and addresses of all persons who are:
 - (i) With respect to the athlete agent's business if it is not a corporation, the partners, officers, associates, or profit-sharers; and
 - (ii) With respect to a corporation employing the athlete agent, the officers, directors, and any shareholder of the corporation with a five percent or greater interest;
 - (h) Whether the athlete agent or any other person named pursuant to (g) of this subsection has been convicted of a crime that, if com-

mitted in this state, would be a felony or other crime involving moral turpitude, and identify the crime;

- (i) Whether there has been any administrative or judicial determination that the athlete agent or any other person named pursuant to (g) of this subsection has made a false, misleading, deceptive, or **fraudulent** representation;
 - (j) Any instance in which the conduct of the athlete agent or any other person named pursuant to (g) of this subsection resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or educational institution;
 - (k) Any sanction, suspension, or disciplinary action taken against the athlete agent or any other person named pursuant to (g) of this subsection arising out of occupational or professional conduct; and
 - (l) Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the athlete agent or any other person named pursuant to (g) of this subsection as an athlete agent in any state.
- (2) An individual who has submitted an application for, and received a certificate of or a renewal of a certificate of, registration or licensure as an athlete agent in another state may submit a copy of the application and a valid certificate of registration or licensure from the other state in lieu of submitting an athlete agent disclosure form in the form prescribed pursuant to subsection (1) of this section, but only if the application to the other state:
- (a) Was submitted in the other state within the six months next preceding the date of delivery of the athlete agent disclosure form in this state and the athlete agent certifies the information contained in the application is current;
 - (b) Contains information substantially similar to or more comprehensive than that required in an athlete agent disclosure form under subsection (1) of this section; and
 - (c) Was signed by the athlete agent under penalty of perjury.

§ 19.225.050. Disqualifications

No person may engage in the business of an athlete agent who has:

- (1) Been convicted of a crime that, if committed in this state, would be a felony or other crime involving moral turpitude;

- (2) Made a materially false, misleading, deceptive, or **fraudulent** representation as an athlete agent or in the application for licensure or registration as an athlete agent in another state;
- (3) Engaged in conduct prohibited by RCW 19.225.100;
- (4) Had a registration or licensure as an athlete agent suspended, revoked, or denied or been refused renewal of registration or licensure in any state; or
- (5) Engaged in conduct or failed to engage 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.

§ 19.225.060. Form of contract

- (1) An agency contract must be in a record signed by the parties.
- (2) An agency contract must state or contain:
 - (a) 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;
 - (b) The name of any person other than the athlete agent who will be compensated because the student-athlete signed the agency contract;
 - (c) A description of any expenses that the student-athlete agrees to reimburse;
 - (d) A description of the services to be provided to the student-athlete;
 - (e) The duration of the contract; and
 - (f) The date of execution.
- (3) 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:

- (a) **YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT-ATHLETE IN YOUR SPORT;**
- (b) **BOTH YOU AND YOUR ATHLETE AGENT ARE REQUIRED TO TELL YOUR ATHLETIC DIRECTOR, IF YOU HAVE AN ATHLETIC DIRECTOR, AT LEAST SEVENTY-TWO HOURS**

PRIOR TO ENTERING INTO AN AGENCY CONTRACT AND AGAIN WITHIN SEVENTY-TWO HOURS AFTER ENTERING INTO AN AGENCY CONTRACT; AND

- (c) YOU MAY CANCEL THIS CONTRACT WITHIN FOURTEEN DAYS AFTER SIGNING IT. CANCELLATION OF THE CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.
- (4) A copy of the athlete agent disclosure form delivered to the student-athlete shall be attached to the agency contract.
- (5) An agency contract that does not conform to this section is voidable by the student-athlete.
- (6) The athlete agent shall give a copy of the signed agency contract to the student-athlete at the time of signing.

§ 19.225.070. Notice to educational institution

- (1) At least seventy-two hours prior to entering into an agency contract, the athlete agent shall give notice in a record of the existence of the contract and shall provide a copy of the athlete agent disclosure form 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.
- (2) 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 and shall provide a copy of the athlete agent disclosure form 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.
- (3) At least seventy-two hours prior to entering into an agency contract, the student-athlete shall give notice in a record of the existence of the contract and shall provide a copy of the athlete agent disclosure form to the athletic director of the educational institution at which the student-athlete is enrolled.
- (4) 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 and shall provide a copy of the athlete agent disclosure form.

§ 19.225.080. Student-athlete's right to cancel

- (1) A student-athlete may cancel an agency contract by giving notice in a record to the athlete agent of the cancellation within fourteen days after the contract is signed.
- (2) A student-athlete may not waive the right to cancel an agency contract.
- (3) If a student-athlete cancels an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the agent to induce the student-athlete to enter into the contract.

§ 19.225.090. Required records—Retention

- (1) An athlete agent shall retain the following records for a period of five years:
 - (a) The name and address of each individual represented by the athlete agent;
 - (b) Any agency contract entered into by the athlete agent; and
 - (c) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete.
- (2) Records required by subsection (1) of this section to be retained are subject to subpoena in a judicial proceeding.

§ 19.225.100. Prohibited acts

- (1) An athlete agent may not do any of the following with the intent to induce a student-athlete to enter into an agency contract:
 - (a) Give any materially false or misleading information or make a materially false promise or representation;
 - (b) Furnish anything of value to a student-athlete before the student-athlete enters into the agency contract; or
 - (c) Furnish anything of value to any individual other than the student-athlete or another registered athlete agent.
- (2) An athlete agent may not intentionally:
 - (a) Initiate contact with a student-athlete unless providing the student-athlete with the athlete agent disclosure form as provided in RCW 19.225.030;
 - (b) Refuse or willfully fail to retain or produce in response to subpoena the records required by RCW 19.225.090;

- (c) Fail to disclose information required by RCW 19.225.040;
- (d) Provide materially false or misleading information in an athlete agent disclosure form;
- (e) Predate or postdate an agency contract;
- (f) Fail to notify a student-athlete prior to the student-athlete's signing an agency contract for a particular sport that the signing by the student-athlete may make the student-athlete ineligible to participate as a student-athlete in that sport;
- (g) Ask or allow a student-athlete to waive or attempt to waive rights under this chapter;
- (h) Fail to give notice required under RCW 19.225.070; or
- (i) Engage in the business of an athlete agent in this state: (A) At any time after conviction under RCW 19.225.110; or (B) within five years of entry of a civil judgment under RCW 19.225.120.

§ 19.225.110. Criminal/civil penalties

The commission of any act prohibited by RCW 19.225.100 by an athlete agent is a class C felony punishable according to chapter 9A.20 RCW. In addition to any criminal penalties, the court may assess a civil penalty of up to ten thousand dollars for a violation of RCW 19.225.100.

§ 19.225.120. Civil remedies

- (1) 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 under this section, the court may award to the prevailing party costs and reasonable attorneys' fees.
- (2) Damages of an educational institution under subsection (1) of this section include losses and expenses incurred because, as a result of the activities of an athlete agent or former student-athlete, 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.
- (3) A right of action under 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.

- (4) Any liability of the athlete agent or the former student-athlete under this section is several and not joint.
- (5) This chapter does not restrict rights, remedies, or defenses of any person under law or equity.

§ 19.225.900. Short title

This chapter may be cited as the Uniform Athlete Agents Act.

§ 19.225.901. Application—Construction—2002 c 131

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 of this chapter among states that enact it.

§ 19.225.902. Severability—2002 c 131

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

§ 19.225.903. Captions not law

Captions used in this chapter are not any part of the law.

WEST VIRGINIA

W. Va. Code Ann. § 30-39-1 to § 30-39-21 (LexisNexis 2002)

§ 30-39-1. Short title.

This article may be cited as the Uniform Athlete Agents Act.

§ 30-39-2. Definitions.

In this article:

(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.

(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) "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.

(6) "Intercollegiate sport" means a sport played at the collegiate level for which eligibility requirements for participation by a student-athlete are

established by a national association for the promotion or regulation of collegiate athletics.

(7) "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.

(8) "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) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(10) "Registration" means registration as an athlete agent pursuant to this article.

(11) "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.

(12) "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.

§ 30-39-3. Service of process; subpoenas.

- (a) By acting as an athlete agent in this state, a nonresident individual appoints the secretary of state as the individual's agent for service of process in any civil action in this state related to the individual's acting as an athlete agent in this state.
- (b) The secretary of state may issue subpoenas for any material that is relevant to the administration of this article.

§ 30-39-4. Athlete agents: registration required; void contracts.

- (a) Except as otherwise provided in subsection (b) of this section, an individual may not act as an athlete agent in this state without holding a certificate of registration under section six or eight [§ 30-39-6 or § 30-39-8] of this article.

- (b) Before being issued a certificate of registration, an individual may act as an athlete agent in this state for all purposes except signing an agency contract, if:
 - (1) A student-athlete or another person acting on behalf of the student-athlete initiates communication with the individual; and
 - (2) Within seven days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in this state.
- (c) An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract.

§ 30-39-5. Registration as athlete agent; form; requirements.

- (a) An applicant for registration shall submit an application for registration to the secretary of state in a form prescribed by the secretary of state. An application filed under this section is a public record. The application must be in the name of an individual and, except as otherwise provided in subsection (b) of this section, signed or otherwise authenticated by the applicant under penalty of perjury and state or contain:
 - (1) The name of the applicant and the address of the applicant's principal place of business;
 - (2) The name of the applicant's business or employer, if applicable;
 - (3) Any business or occupation engaged in by the applicant for the five years next preceding the date of submission of the application;
 - (4) A description of the applicant's:
 - (A) Formal training as an athlete agent;
 - (B) Practical experience as an athlete agent; and
 - (C) Educational background relating to the applicant's activities as an athlete agent;
 - (5) The names and addresses of three individuals not related to the applicant who are willing to serve as references;
 - (6) The name, sport and last known team for each individual for whom the applicant acted as an athlete agent during the five years next preceding the date of submission of the application;
 - (7) The names and addresses of all persons who are:

- (A) With respect to the athlete agent's business if it is not a corporation, the partners, members, officers, managers, associates or profit-sharers of the business; and
 - (B) With respect to a corporation employing the athlete agent, the officers, directors and any shareholder of the corporation having an interest of five percent or greater;
- (8) Whether the applicant or any person named pursuant to subdivision (7) of this subsection has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony, and identify the crime;
 - (9) Whether there has been any administrative or judicial determination that the applicant or any person named pursuant to subdivision (7) of this subsection has made a false, misleading, deceptive, or **fraudulent** representation;
 - (10) Any instance in which the conduct of the applicant or any person named pursuant to subdivision (7) of this subsection resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or educational institution;
 - (11) Any sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to subdivision (7) of this subsection arising out of occupational or professional conduct; and
 - (12) Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any person named pursuant to subdivision (7) of this subsection as an athlete agent in any state.
- (b) An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another state, may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to subsection (a) of this section. The secretary of state shall accept the application and the certificate from the other state as an application for registration in this state if the application to the other state:
 - (1) Was submitted in the other state within six months next preceding the submission of the application in this state and the applicant certifies that the information contained in the application is current;
 - (2) Contains information substantially similar to or more comprehensive than that required in an application submitted in this state; and

- (3) Was signed by the applicant under penalty of perjury

§ 30-39-6. Certificate of registration; issuance or denial; renewal.

- (a) Except as otherwise provided in subsection (b) of this section, the secretary of state shall issue a certificate of registration to an individual who complies with subsection (a), section five [§ 30-39-5] of this article or whose application has been accepted under subsection (b), section five of this article.
- (b) The secretary of state may refuse to issue a certificate of registration if the secretary of state determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the secretary of state may consider whether the applicant has:
 - (1) Been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony;
 - (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 fourteen [§ 30-39-14] of this article;
 - (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) of this section, the secretary of state 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 secretary of state. An application filed under 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) 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) of this section, may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. The secretary of state shall accept the application for renewal from the other state as an application for renewal in this state if the application to the other state:
 - (1) Was submitted in the other state within six months next preceding the filing in this state and the applicant certifies the information contained in the application for renewal is current;
 - (2) Contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this state; and
 - (3) Was signed by the applicant under penalty of perjury.
- (f) A certificate of registration or a renewal of a registration is valid for two years.

§ 30-39-7. Suspension, revocation, or refusal to renew registration.

- (a) The secretary of state may suspend, revoke or refuse to renew a registration for conduct that would have justified denial of registration under subsection (b), section six [§ 30-39-6] of this article.
- (b) The secretary of state may deny, suspend, revoke or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing. The provisions of article five [§§ 29A-5-1 et seq.], chapter twenty-nine-a of this code apply to this article.

§ 30-39-8. Temporary registration.

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

§ 30-39-9. Registration and renewal fees.

An application for registration or renewal of registration must be accompanied by a fee in the following amount:

- (1) Fifty dollars for an initial application for registration;

- (2) Fifty dollars for an application for registration based upon a certificate of registration or licensure issued by another state;
- (3) Ten dollars for an application for renewal of registration; or
- (4) Ten dollars for an application for renewal of registration based upon an application for renewal of registration or licensure submitted in another state.

§ 30-39-10. Required form of contract.

- (a) An agency contract must be in a record, signed or otherwise authenticated by the parties.
- (b) An agency contract must state or 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 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, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND**
- (3) **YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.**

- (d) An agency contract that does not conform to this section is voidable by the student-athlete. If a student-athlete voids an agency contract, the student-athlete is not required to pay 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.
- (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.

§ 30-39-11. Notice to educational institution.

- (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.

§ 30-39-12. Student-athlete's right to cancel.

- (a) A student-athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within fourteen days after the contract is signed.
- (b) A student-athlete may not waive the right to cancel an agency contract.
- (c) If a student-athlete cancels an agency contract, the student-athlete is not required to pay 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.

§ 30-39-13. Required records.

- (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) Any agency contract entered into by the athlete agent; and
 - (3) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract.
- (b) Records required by subsection (a) of this article to be retained are open to inspection by the secretary of state during normal business hours.

§ 30-39-14. Prohibited conduct.

- (a) An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, may not:
- (1) Give any 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 any individual other than the student-athlete or another registered athlete agent.
- (b) An athlete agent may not intentionally:
- (1) Initiate contact with a student-athlete unless registered under this article;
 - (2) Refuse or fail to retain or permit inspection of the records required to be retained by section thirteen [§30-39-13] of this article;
 - (3) Fail to register when required by section four [§ 30-39-4] of this article;
 - (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 before the student-athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate as a student-athlete in that sport.

§ 30-39-15. Criminal penalties.

An athlete agent who violates subsection (a), section fourteen [§ 30-39-14] of this article is guilty of a felony and, upon conviction thereof, shall be

fined not more than fifty thousand dollars or confined in a state correctional facility for not less than one nor more than three years, or both so fined and confined.

An athlete agent who violates subsection (b), section fourteen [§30-39-14] of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars or confined in a county or regional jail for not more than one year, or both so fined and confined.

§ 30-39-16. Civil remedies.

- (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 article. In an action under this section, the court may award to the prevailing party costs and reasonable attorney's fees.
- (b) Damages of an educational institution under subsection (a) of this section include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student-athlete, the educational institution was injured by a violation of this article 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 under 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) Any liability of the athlete agent or the former student-athlete under this section is several and not joint.
- (e) This article does not restrict rights, remedies, or defenses of any person under law or equity.

§ 30-39-17. Administrative penalty.

The secretary of state may assess a civil penalty against an athlete agent not to exceed twenty-five thousand dollars for a violation of this article.

§ 30-39-18. Uniformity of application and construction.

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.

§ 30-39-19. Electronic signatures in global and national commerce act.

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

§ 30-39-20. Severability.

If any provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

§ 30-39-21. Effective date.

This article takes effect on the first day of July, two thousand one.

WISCONSIN

Wis. Stat. Ann. §§ 440.99 to 440.999 (West 2005 & Supp. 2005)

§ 440.99. Definitions

In this subchapter:

(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 recruits or solicits a student athlete to enter into an agency contract. "Athlete agent" includes an individual who represents to the public that the individual is an athlete agent. "Athlete agent" 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. "Athlete agent" also does not include an individual who provides information to a student athlete, but who does not recruit or solicit the student athlete to enter into an agency contract.

(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) "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.

(6) "Intercollegiate sport" means a sport played at the collegiate level for which eligibility requirements for participation by a student athlete are

established by a national association for the promotion or regulation of collegiate athletics.

(7) "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.

(8) "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.

(9) "Registration" means registration as an athlete agent under this subchapter.

(10) "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.

(11) "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.

§ 440.9905. Service of process

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

§ 440.991. Athlete agents: registration required; void contracts

- (1) Except as otherwise provided in sub. (2), an individual may not act as an athlete agent in this state without holding a certificate of registration under s. 440.992 or 440.993.
- (2) Before being issued a certificate of registration, an individual may act as an athlete agent in this state for all purposes except signing an agency contract, if all of the following are satisfied:
 - (a) A student athlete or another person acting on behalf of the student athlete initiates communication with the individual.
 - (b) Within 7 days after an initial act as an athlete agent, such as an effort to recruit or solicit a student athlete to enter into an agency

contract, the individual submits an application for registration as an athlete agent in this state.

- (3) An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract.

§ 440.9915. Registration as athlete agent; form; requirements

- (1) An applicant for registration as an athlete agent shall submit an application for registration to the department in a form prescribed by the department. The application must be in the name of an individual and, except as otherwise provided in sub. (2), signed or otherwise authenticated by the applicant under penalty of perjury and state or contain all of the following:
 - (a) The name of the applicant and the address of the applicant's principal place of business.
 - (b) The name of the applicant's business or employer, if applicable.
 - (c) Any business or occupation engaged in by the applicant for the 5 years next preceding the date of submission of the application.
 - (d) A description of all of the following:
 1. The applicant's formal training as an athlete agent.
 2. The applicant's practical experience as an athlete agent.
 3. The applicant's educational background relating to his or her activities as an athlete agent.
 - (e) The name, sport, and last-known team for each individual for whom the applicant acted as an athlete agent during the 5 years next preceding the date of submission of the application.
 - (f) If the athlete agent's business is not a corporation, the names and addresses of the partners, members, officers, managers, associates, or profit sharers of the business.
 - (g) If the athlete agent is employed by a corporation, the names and addresses of the officers and directors of the corporation and any shareholder of the corporation having an interest of 5 percent or more.
 - (h) Whether the applicant or any person named pursuant to par. (f) or (g) has been convicted of a crime that, if committed in this state, would be a felony, and a description of the crime.
 - (i) Whether there has been any administrative or judicial determination that the applicant or any person named pursuant to par. (f) or

- (g) has made a false, misleading, deceptive, or **fraudulent** representation.
 - (j) Any instance in which the conduct of the applicant or any person named pursuant to par. (f) or (g) resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student athlete or educational institution.
 - (k) Any sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to par. (f) or (g) arising out of occupational or professional conduct.
 - (1) Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any person named pursuant to par. (f) or (g) as an athlete agent in any state.
- (2) An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another state may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to sub. (1). The department shall accept the application and the certificate from the other state as an application for registration in this state if all of the following are satisfied:
- (a) The application to the other state was submitted in the other state within the 6 months next preceding the submission of the application in this state and the applicant certifies that the information contained in the application to the other state is current.
 - (b) The application to the other state contains information substantially similar to or more comprehensive than that required in an application submitted in this state.
 - (c) The application to the other state was signed by the applicant under penalty of perjury.

§ 440.992. Certificate of registration; issuance or denial; renewal

- (1) Except as otherwise provided in sub. (2), the department shall issue a certificate of registration to an individual who complies with s. 440.9915 (1) or whose application has been accepted under s. 440.9915(2), if the individual has paid the fee specified in s. 440.05(1)(a).
- (2) The department may refuse to issue a certificate of registration if the department determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an

athlete agent. In making the determination, the department may consider whether the applicant has done any of the following:

- (a) Subject to ss. 111.321, 111.322, and 111.335, been convicted of a crime that, if committed in this state, would be a felony.
 - (b) Made a materially false, misleading, deceptive, or **fraudulent** representation in the application or as an athlete agent.
 - (c) Engaged in unprofessional conduct or conduct that would disqualify the applicant from serving in a fiduciary capacity.
 - (d) Engaged in conduct prohibited by s. 440.996.
 - (e) 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.
 - (f) 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.
 - (g) Engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty, or integrity.
- (3) In making a determination under sub. (2), the department shall consider each of the following:
- (a) How recently the conduct occurred.
 - (b) The nature of the conduct and the context in which it occurred.
 - (c) Any other relevant conduct of the applicant.
- (4) An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the department. 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. Applications submitted under this subsection shall be open to inspection at all reasonable hours authorized by representatives of the department.
- (5) 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 under sub. (4), may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. The department 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 satisfies all of the following:

- (a) The application was submitted in the other state within the 6 months next preceding the filing in this state and the applicant certifies that the information contained in the application for renewal is current.
 - (b) The application contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this state.
 - (c) The application was signed by the applicant under penalty of perjury.
- (6) A certificate of registration or a renewal of a registration is valid for 2 years.

§ 440.9925. Suspension, revocation, or refusal to renew registration

- (1) The department may suspend, revoke, or refuse to renew a registration for conduct that would have justified denial of registration under s. 440.992(2).
- (2) The department may deny, suspend, revoke, or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing.

§ 440.993. Temporary registration

The department may issue a temporary certificate of registration while an application for registration or renewal of registration is pending. The department shall promulgate rules establishing requirements and procedures for applying for and issuing temporary certificates of registration.

§ 440.9935. Renewal

The renewal date and fee for certificates of registration issued under this subchapter are specified in s. 440.08(2)(a). Renewal applications shall be submitted to the department on a form provided by the department.

§ 440.994. Required form of contract

- (1) An agency contract must be in a record, signed or otherwise authenticated by the parties.
- (2) An agency contract must state or contain all of the following:

- (a) 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 that the athlete agent has received or will receive from any other source for entering into the contract or for providing the services.
 - (b) 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.
 - (c) A description of any expenses that the student athlete agrees to reimburse.
 - (d) A description of the services to be provided to the student athlete.
 - (e) The duration of the contract.
 - (f) The date of execution.
- (3) An agency contract must contain, in close proximity to the signature of the student athlete, a conspicuous notice in boldface type and capital letters stating the following:

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 AFTER ENTERING INTO THIS CONTRACT OR BEFORE THE NEXT SCHEDULED ATHLETIC EVENT IN WHICH YOU MAY PARTICIPATE, WHICHEVER OCCURS FIRST, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND**
 - 3) **YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.**
- (4) 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.
- (5) The athlete agent shall give a record of the signed or otherwise authenticated agency contract to the student athlete at the time of execution.

§ 440.9945. Notice to educational institution

- (1) Within 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 the athlete agent has reasonable grounds to believe the student athlete intends to enroll.
- (2) Within 72 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.

§ 440.995. Student athlete's right to cancel

- (1) A student athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within 14 days after the contract is signed.
- (2) A student athlete may not waive the right to cancel an agency contract.
- (3) If a student athlete cancels 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.

§ 440.9955. Required records

- (1) An athlete agent shall retain all of the following records for a period of 5 years:
 - (a) The name and address of each individual represented by the athlete agent.
 - (b) Any agency contract entered into by the athlete agent.
 - (c) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student athlete to enter into an agency contract.
- (2) Records required by sub. (1) to be retained are open to inspection by the department during normal business hours. Upon demand, an athlete agent shall provide a copy of such a record to the department.

§ 440.996. Prohibited conduct

- (1) An athlete agent, with the intent to induce a student athlete to enter into an agency contract, may not do any of the following:
 - (a) Give any materially false or misleading information or make a materially false promise or representation.
 - (b) Furnish anything of value to a student athlete before the student athlete enters into the agency contract.
 - (c) Furnish anything of value to any individual other than the student athlete or another registered athlete agent.
- (2) An athlete agent may not intentionally do any of the following:
 - (a) Initiate contact with a student athlete unless registered under this subchapter.
 - (b) Refuse or fail to retain or permit inspection of the records required to be retained by s. 440.9955.
 - (c) Fail to register when required by s. 440.991.
 - (d) Provide materially false or misleading information in an application for registration or renewal of registration.
 - (f) Predate or postdate an agency contract.
 - (g) Fail to notify a student athlete before the student athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student athlete ineligible to participate as a student athlete in that sport.

§ 440.9965. Criminal penalties

An athlete agent who violates s. 440.996 may be fined not more than \$10,000 or imprisoned for not more than 9 months or both.

§ 440.997. Civil remedies

- (1) An educational institution may bring an action against an athlete agent for damages caused by a violation of this subchapter. In an action under this subsection, the court may award to the prevailing party costs and, notwithstanding s. 814.04, reasonable attorney fees.
- (2) Damages of an educational institution under sub. (1) include losses and expenses incurred because, as a result of the conduct of an athlete agent, the educational institution was injured by a violation of this subchapter 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.

- (3) A right of action under 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.
- (4) This subchapter does not restrict rights, remedies, or defenses of any person under law or equity.

§ 440.9975. Administrative forfeiture

The department may directly assess a forfeiture against an athlete agent of not more than \$25,000 for a violation of this subchapter.

§ 440.998. Uniformity of application and construction

In applying and construing this subchapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact the Uniform Athlete Agents Act.

§ 440.9985. Electronic Signatures in Global and National Commerce Act

The provisions of this subchapter governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures conform to the requirements of section 102 of the federal Electronic Signatures in Global and National Commerce Act, 15 USC 7002, and supersede, modify, and limit the federal Electronic Signatures in Global and National Commerce Act, 15 USC 7001 to 7031.

§ 440.999. Rules

The department shall promulgate rules that define unprofessional conduct for purposes of s. 440.992(2)(c).

WYOMING

Wyo. Stat. Ann. § 33-44-101 to § 33-44-114 (2005)

§ 33-44-101. Short title.

This act may be cited as the “Uniform Athlete Agents Act.”

§ 33-44-102. Definitions.

(a) As used in this act:

(i) “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;

(ii) “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 does not include a spouse, parent, sibling, grandparent or legal guardian of the student athlete or an individual acting solely on behalf of a professional sports team or professional sports organization. The term includes an individual who represents to the public that the individual is an athlete agent;

(iii) “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;

(iv) “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;

(v) “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;

(vi) "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;

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

(viii) "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;

(ix) "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;

(x) "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;

(xi) "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; and

(xii) "This act" means W.S. 33-44-101 through 33-44-114.

§ 33-44-103. Service of process.

By engaging in the business of an athlete agent in this state, a nonresident individual appoints the secretary of state as the individual's agent to accept service of process in any civil action related to the individual's business as an athlete agent in this state.

§ 33-44-104. Athlete agents; delivery of disclosure form required.

- (a) Except as otherwise provided in subsection (b) of this section, an individual may not act as an athlete agent in this state unless on the day of initial contact with any student athlete the athlete agent delivers to the student athlete the athlete agent disclosure form as required by W.S. 33-44-105.

- (b) An individual may act as an athlete agent before delivering an athlete agent disclosure form for all purposes except signing an agency contract if:
 - (i) A student athlete or another acting on behalf of the student athlete initiates communication with the individual; and
 - (ii) Within seven (7) days after an initial act as an athlete agent, the individual delivers an athlete agent disclosure form to the student athlete.
- (c) An agency contract resulting from conduct in violation of this section is void. The athlete agent shall return any consideration received under the contract.

§ 33-44-105. Athlete agent disclosure form; requirements.

- (a) The athlete agent disclosure form shall be in a record executed in the name of an individual and signed by the athlete agent under penalty of perjury and, except as otherwise provided in subsection (b) of this section, must state or contain:
 - (i) The name of the athlete agent and the address of the athlete agent's principal place of business;
 - (ii) The name of the athlete agent's business or employer, if applicable
 - (iii) Any business or occupation engaged in by the athlete agent for the five (5) years next preceding the date of execution of the athlete agent disclosure form;
 - (iv) A description of the athlete agent's:
 - (A) Formal training as an athlete agent;
 - (B) Practical experience as an athlete agent; and
 - (C) Educational background relating to the athlete agent's activities as an athlete agent.
 - (v) The names and addresses of three (3) individuals not related to the athlete agent who are willing to serve as references;
 - (vi) The name, sport, and last known team for each individual for whom the athlete agent provided services as an athlete agent during the five (5) years next preceding the date of execution of the athlete agent disclosure form;
 - (vii) 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, officers, associates or profit-sharers; and
 - (B) With respect to a corporation employing the athlete agent, the officers, directors and any shareholder of the corporation with a five percent (5%) or greater interest.
- (viii) Whether the athlete agent or any other person named pursuant to paragraph (vii) of this subsection has been convicted of a crime that, if committed in this state, would be a felony or other crime involving moral turpitude, and identify the crime;
 - (ix) Whether there has been any administrative or judicial determination that the athlete agent or any other person named pursuant to paragraph (vii) of this subsection has made a false, misleading, deceptive or **fraudulent** representation;
 - (x) Any instance in which the conduct of the athlete agent or any other person named pursuant to paragraph (vii) of this subsection resulted in the imposition of a sanction, suspension or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student athlete or educational institution;
 - (xi) Any sanction, suspension or disciplinary action taken against the athlete agent or any other person named pursuant to paragraph (vii) of this subsection arising out of occupational or professional conduct; and
 - (xii) Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the athlete agent or any other person named pursuant to paragraph (vii) of this subsection as an athlete agent in any state.
- (b) An individual who has submitted an application for, and received a certificate of or a renewal of a certificate of, registration or licensure as an athlete agent in another state may submit a copy of the application and a valid certificate of registration or licensure from the other state in lieu of submitting an athlete agent disclosure form in the form prescribed pursuant to subsection (a) of this section, but only if the application to the other state:
 - (i) Was submitted in the other state within the six (6) months next preceding the date of delivery of the athlete agent disclosure form in this state and the athlete agent certifies the information contained in the application is current;

- (ii) Contains information substantially similar to or more comprehensive than that required in an athlete agent disclosure form under subsection (a) of this section; and
- (iii) Was signed by the athlete agent under penalty of perjury.

§ 33-44-106. Disqualifications.

- (a) No person may engage in the business of an athlete agent who has:
 - (i) Been convicted of a crime that, if committed in this state, would be a felony or other crime involving moral turpitude;
 - (ii) Made a materially false, misleading, deceptive or **fraudulent** representation as an athlete agent or in the application for licensure or registration as an athlete agent in another state;
 - (iii) Engaged in conduct prohibited by W.S. 33-44-111;
 - (iv) Had a registration or licensure as an athlete agent suspended, revoked or denied or been refused renewal of registration or licensure in any state; or
 - (v) Engaged in conduct or failed to engage 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.

§ 33-44-107. Form of contract.

- (a) An agency contract shall be in a record signed by the parties.
- (b) An agency contract shall state or contain:
 - (i) 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;
 - (ii) The name of any person other than the athlete agent who will be compensated because the student athlete signed the agency contract;
 - (iii) A description of any expenses that the student athlete agrees to reimburse;
 - (iv) A description of the services to be provided to the student athlete;
 - (v) The duration of the contract; and
 - (vi) The date of execution.

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

WARNING TO STUDENT ATHLETE

IF YOU SIGN THIS CONTRACT:

- (1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT ATHLETE IN YOUR SPORT;
 - (2) BOTH YOU AND YOUR ATHLETE AGENT ARE REQUIRED TO TELL YOUR ATHLETIC DIRECTOR, IF YOU HAVE AN ATHLETIC DIRECTOR, AT LEAST SEVENTY-TWO (72) HOURS PRIOR TO ENTERING INTO AN AGENCY CONTRACT AND AGAIN WITHIN SEVENTY-TWO (72) HOURS AFTER ENTERING INTO AN AGENCY CONTRACT; AND
 - (3) YOU MAY CANCEL THIS CONTRACT WITHIN FOURTEEN (14) DAYS AFTER SIGNING IT. CANCELLATION OF THE CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.
- (d) A copy of the athlete agent disclosure form delivered to the student athlete shall be attached to the agency contract.
 - (e) An agency contract that does not conform to this section is voidable by the student athlete.
 - (f) The athlete agent shall give a copy of the signed agency contract to the student athlete at the time of signing.

§ 33-44-108. Notice to educational institution.

- (a) At least seventy-two (72) hours prior to entering into an agency contract, the athlete agent shall give notice in a record of the existence of the contract and shall provide a copy of the athlete agent disclosure form 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 (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 and shall provide a copy of the athlete agent disclosure form 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.

- (c) At least seventy-two (72) hours prior to entering into an agency contract, the student athlete shall give notice in a record of the existence of the contract and shall provide a copy of the athlete agent disclosure form to the athletic director of the educational institution at which the student athlete is enrolled.
- (d) Within seventy-two (72) 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 has entered into an agency contract and shall provide a copy of the athlete agent disclosure form.

§ 33-44-109. Student athlete's right to cancel.

- (a) A student athlete may cancel an agency contract by giving notice in a record to the athlete agent of the cancellation within fourteen (14) days after the contract is signed.
- (b) A student athlete may not waive the right to cancel an agency contract.
- (c) If a student athlete cancels an agency contract, the student athlete is not required to pay any consideration under the contract or to return any consideration received from the agent to induce the student athlete to enter into the contract.

§ 33-44-110. Required records; retention.

- (a) An athlete agent shall retain the following records for a period of five (5) years:
 - (i) The name and address of each individual represented by the athlete agent;
 - (ii) Any agency contract entered into by the athlete agent; and
 - (iii) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student athlete.
- (b) Records required by subsection (a) of this section to be retained are subject to subpoena in a judicial proceeding.

§ 33-44-111. Prohibited acts.

- (a) An athlete agent may not do any of the following with the intent to induce a student athlete to enter into an agency contract:

- (i) Give any materially false or misleading information or make a materially false promise or representation;
 - (ii) Furnish anything of value to a student athlete before the student athlete enters into the agency contract; or
 - (iii) Furnish anything of value to any individual other than the student athlete or another registered athlete agent.
- (b) An athlete agent may not intentionally:
- (i) Initiate contact with a student athlete unless providing the student athlete with the athlete agent disclosure form as provided in W.S. 33-44-104;
 - (ii) Refuse or willfully fail to retain or produce in response to subpoena the records required by W.S. 33-44-110;
 - (iii) Fail to disclose information required by W.S. 33-44-105;
 - (iv) Provide materially false or misleading information in an athlete agent disclosure form;
 - (v) Predate or postdate an agency contract;
 - (vi) Fail to notify a student athlete prior to the student athlete's signing an agency contract for a particular sport that the signing by the student athlete may make the student athlete ineligible to participate as a student athlete in that sport;
 - (vii) Ask or allow a student athlete to waive or attempt to waive rights under this act;
 - (viii) Fail to give notice required under W.S. 33-44-108; or
 - (ix) Engage in the business of an athlete agent in this state:
 - (A) At any time after conviction under W.S. 33-44-112; or
 - (B) Within five (5) years of entry of a civil judgment under W.S. 33-44-113.

§ 33-44-112. Criminal and civil penalties.

The commission of any act prohibited by W.S. 33-44-111 by an athlete agent is a felony punishable by imprisonment of not less than one (1) year, a fine of not more than ten thousand dollars (\$10,000.00), or both. In addition to any criminal penalties, the court may assess a civil penalty of up to ten thousand dollars (\$10,000.00) for a violation of W.S. 33-44-111. Any penalty collected under the provisions of this section shall be deposited in the public school fund of the appropriate county as required by article 7, section 5 of the Wyoming constitution.

§ 33-44-113. Civil remedies.

- (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 act. In an action under this section, the court may award to the prevailing party costs and reasonable attorneys' fees.
- (b) Damages of an educational institution under subsection (a) of this section include losses and expenses incurred because, as a result of the activities of an athlete agent or former student athlete, the educational institution was injured by a violation of this act 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.
- (c) A right of action under 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) Any liability of the athlete agent or the former student athlete under this section is several and not joint.
- (e) This act does not restrict rights, remedies or defenses of any person under law or equity.

§ 33-44-114. Application; construction.

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

