

Committee Name:
Senate Committee –
Higher Education and Tourism
(SC–HET)

Appointments

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Committee Hearings

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Committee Reports

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Clearinghouse Rules

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Executive Sessions

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Hearing Records

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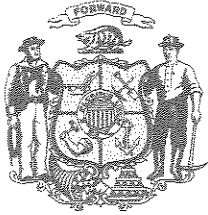
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Record of Committee Proceedings

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TED KANAVAS

STATE SENATOR

Chairperson Harsdorf and members of the Senate Committee on Higher Education and Tourism,

I want to thank you for giving me the opportunity to testify today on Senate Bill 209 (SB 209), which will put in place measures by which the state of Wisconsin can regulate athlete agents.

SB 209, which is the Uniform Athlete Agent Act that was passed in 2000 by the National Conference of Commissioners on Uniform State Laws, will help protect both the student athlete and the colleges and universities in this state.

This bill will require athlete agents to register with the state of Wisconsin, more specifically the Wisconsin Department of Regulation and Licensing. And, while registering, they must provide the state with their education, training, experience, and business partners. Furthermore, the bill also requires that all contracts between student-athlete and athlete agent are clear in the basic understanding that signing an agent contract will equate to a loss of eligibility.

Thirteen states have already enacted this legislation, and I believe that Wisconsin should also join the ranks. In passing SB 209, Wisconsin will enter into reciprocal agreements in other states so that it is both cost-effective and efficient for the athlete agent.

But, this bill is not intended to just help athlete agents. Instead, it is focused at assisting student athletes and colleges and universities so that both the student and school are not penalized for misleading actions by athlete agents.

SB 209 will protect a student-athlete from being taken advantage by an athlete agent who may fill the athlete full of false information in the hope that the student-athlete will sign with them. And, it will protect the student-athlete from entering into a contract that eliminate their eligibility and the potential harm that the loss of eligibility could have on their respective school. In a day and age when post-season play can provide millions of dollars to colleges and universities, this could place a serious blow to athletic budgets for the school in question.

In our current sports environment, student-athletes are leaving school early to enter into the professional ranks for lucrative contracts, the student-athletes are becoming more vulnerable to the actions of athlete agents who may lack professional integrity. With this requirement to register with the state, student-athletes will be given an outlet to research who they want to be their agent. And good information will create smart decisions.

STATE CAPITOL

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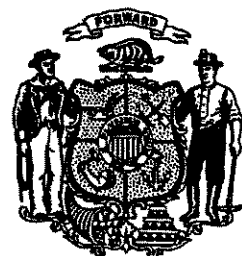
I do not want to see a student-athlete losing eligibility, a college or university losing millions of dollars or forfeiting games, and even losing scholarships for future recruiting classes. These incidents do not only affect the Division 1-A programs like the University of Wisconsin-Madison, the University of Wisconsin –Milwaukee, Marquette University, or University of Green Bay; but also our Division III state schools and high schools. There are a growing number of students in our state university conference that are entering the professional ranks. For example, the UW-Whitewater, UW-Stout, UW-La Crosse, and UW-Stevens Point have a former student-athlete in the NFL. And, it may not be long before some Wisconsin high school basketball player will forgo college and enter the NBA draft and be the next LeBron James.

This is a common sense bill, and it has support of the NCAA, the WIAA, UW-Madison, Marquette University, UW-Milwaukee, WIAC, National Junior College Athletic Association, Big 10 Conference, Conference USA, and UW-Green Bay.

Please vote in favor of Senate Bill 209. Thank you for your consideration.

ATHLETE AGENTS
A Resource Paper and Analysis of 2003 SB 209/AB 403

State of Wisconsin
Department of Regulation and Licensing
Resource Paper, July 2003



I. Introduction

The proposed legislation was drafted by the National Conference of Commissioners on Uniform State Laws. (Uniform Athlete Agents Act 2000, the "Act") The preamble to the Act details problems with the athlete/athlete agent relationship to be addressed. Most significant are: 1) A minority of agents engage in secret payments or gifts to athletes, undisclosed payments or gifts to friends and relatives, unrealistic promises and "considerable" arm-twisting; 2) 28 states have enacted legislation regulating athlete agents. The statutes differ greatly. Two thirds of the statutes impose registration requirements.

As a result, the Act is designed for uniformity and to allow reciprocity. The NCAA requested the Act be drafted.

II. Effect on Existing State Law.

Currently, Wisconsin does not regulate athlete agents.

The Act defines an "Athlete agent" as an individual who enters into an agency contract with a student athlete or recruits or solicits to enter or represents to the public that the individual is an athlete agent. The definition excludes spouses, certain family members, or individuals acting solely on behalf of a professional sports team or professional sports organization. Also excluded is an individual who provides information to a student athlete, but does not recruit or solicit the student athlete to enter into an agency contract.

An agent cannot act as an athlete agent without being registered, except that an individual may act as an athlete agent in Wisconsin for all purposes except signing an agency contract if:

(a) the student athlete or person on behalf of the athlete initiates communication with the individual, AND;

(b) within 7 days after an "initial act" as an agent such as an effort to recruit or solicit a student athlete to enter into an agency contract, the individual applies for registration as an agent in this state.

An agency contract resulting from conduct in violation of the registration requirements is void and the athlete agent must return any consideration received under the contract.

Certain disclosures must be made in the application for registration, such as the applicant's training as an agent, practical experience, educational background, references, employer information, judicial determinations against the applicant regarding any misrepresentations and any disciplinary actions or sanctions arising out of professional conduct. The agency administering the Act may refuse to issue a registration if it determines the applicant has "engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent."

The Act specifies terms that must be in a contract with a student athlete which include: 1) the amount and method of calculating consideration, 2) a description

of expenses that the athlete will reimburse, and 3) a description of the services to be provided.

The contract must also contain the warning of a student's rights and duties in "close proximity" to the signature of the student athlete. These include: 1) the student may lose eligibility by signing the contract, 2) if the student has an athletic director, within 72 hours after entering into the contract, both the student and the agent must notify that athletic director, 3) the student athlete has a 14 day cancellation right after signing, 4) Cancellation may not reinstate eligibility.

The Act requires that the athletic director of the educational institution at which the student is enrolled be notified by the agent and the student within 72 hours of the signing of the contract or before the next scheduled athletic event in which the student athlete may participate, whichever occurs first. The agent must also provide notice to the athletic director of an educational institution which the agent has reasonable grounds to believe the student athlete intends to enroll.

The Act prohibits specific agent practices which create criminal and civil liability. These include: 1) No inducements to enter an agency contract by materially false or misleading information, promises or representations; 2) Furnishing anything of value by the agent to the student athlete before the student athlete enters into the agency contract; 3) Furnishing anything of value to any individual other than the student athlete or another registered athlete agent; 4) Initiating contact with a student athlete unless registered; 5) Refusing or failing to retain or permit inspection of the records required by the Act; 6) Failing to register as required by the Act; 7) Providing materially false or misleading information in an application for registration or renewal; 8) Predating or postdating an agency contract; 9) Failing 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.

The criminal penalties that can apply to agents are a \$10,000 fine per violation or 9 months imprisonment or both.

The civil remedies provided are in favor of educational institutions only. The agent or student athlete (several not joint) are liable for damages caused by a violation of the Act. In addition to an award of monetary damages, costs and attorneys fees may be recovered.

Damages are defined to include losses and expenses incurred for an "injury" or when the educational institution is penalized, disqualified or suspended from participation in athletics by a national association or by an athletic conference. An additional means of creating damages is by, "reasonable self-imposed disciplinary action taken to mitigate sanctions likely to be imposed by such an organization."

An administrative forfeiture of not more than \$25,000 applies per violation against an agent who violates the Act.

III. Legislative Action in Previous Session

The Act has previously been drafted in the 2001-2002 session of the legislature as LRB 3241/4 but was not introduced.

IV. Policy Significance

Jurisdiction is an unsettled issue. It is not clear how the Act applies to a student athlete or agent where a student athlete returns to an out of state residence from a Wisconsin institution, and while out of state signs an agency contract. The Act provides that an individual cannot act as an athlete agent, "in this state" without being registered. It may be that a student athlete and/or an athlete agent could avoid the Act, (and a student athlete may wish too), merely by executing a contract in an alternate jurisdiction.

There are two types of contracts under the Act, void and voidable. Never addressed by the Act is whether a void contract restores eligibility or insulates a student athlete from civil damages for a notice violation. The void contract appears to be void from its inception and is caused by an agent's violation of the registration requirements of the Act. The voidable contract results from a contract that does not contain the required statutory warning. The voidable contract is voidable at the student athlete's option.

The Act lacks clear guidance pertaining to regaining eligibility in the instance of a void or voidable contract. It is also silent regarding a student athlete's civil liability to the educational institution in such instance. (Assuming a notice violation by the student athlete.) It is not clear whether a void or voidable contract has ramifications for eligibility with the NCAA or other groups. If one goal of the Act is to protect student athletes from agent abuses, the Act should be clarified regarding this important issue of the loss and regaining of eligibility and the liability for civil damages.

In the instance of an otherwise valid (or unvoided) contract, the student athlete is granted a cancellation right of 14 days. However, no express safe harbor to reinstate eligibility exists. This may render the right illusory. It is unknown why 14 days was chosen and whether this in some manner impacts eligibility. As in the instance of a void contract or voidable contract, the Act doesn't provide the type of information that the student athlete needs regarding the loss of eligibility and does not reference the applicable third party eligibility standards that apply. Such standards may also change based on the sole discretion of the third party, thus creating a result that the legislature did not intend. Also it appears that canceling the contract may have no effect on the student athlete's civil liability to the educational institution if a notice violation occurred prior to canceling. The Act is silent in this instance. Finally, the manner to exercise the cancellation right is not as explicit as with other consumer protection statutes and should be modified.

Placing statutory penalties on the student athlete can be ill advised when there are no clear means for a student to determine the loss or regaining of eligibility,

especially if such loss occurs after being advised, counseled or "misrepresented" to by the agent. Loss of eligibility with concurrent civil liability which is tied to unstated third party standards, such as the NCAA, may not represent the type of student athlete protection the legislature intended as a matter of public policy.

As an example of further lack of guidance, a student must notify his/her athletic director within 72 hours of the signing of the contract and may be civilly liable for the failure to do so. However, the means to give proper notice is not set forth. Additionally, the 72 hour warning notice in the contract fails to inform the student athlete that the statute actually requires more, a 72 hour notice **or before** the next sports event, whichever occurs first. The statute thus becomes a trap for the student even where he/she follows the notice requirement to the letter.

Also, the Act creates an anomaly given that the student athlete could use no agent or use an excluded person under the Act's definitions or sign directly with a professional team and not fall under the Act at all, thereby avoiding statutory liability for actions otherwise in violation of the Act. Therefore, the Act (perhaps unintentionally) creates two classes of student athletes; one which faces penalties, and one which does not; resulting from the very same action. The Act would be improved by removing this disparity in treatment, and instead concentrate on regulating athlete agents solely. While ostensibly having the purpose to regulate agents, the add-on attempt to regulate student conduct appears inconsistent.

The requirement of additional notice by the agent to an "intended institution" under section 440.9945(1) also raises fairness issues to the agent, by requiring a duty of notice to an undefined institution based on "reasonable belief" a student may attend. Not used is the more specific act, such as a signed letter of intent, as a triggering event instead. As a result, an educational institution with no actual contractual right to a student athlete (at the time agency contract is signed) obtains rights to sue under the Act.

V. Administrative Significance

No funding has been provided in the Act for the Agency tasked with implementation. If the Department of Regulation and licensing implements the Act it may need minor staffing increases to process initial credential applications and renewals, screening, investigation and prosecution of complaints. Rule drafting will also be needed. Additionally, there will be printing costs for application forms, statute and rule books and credential certificates.

VI. Fiscal Effect

VII. Laws in Other States

The Act is adopted currently in 15 states. The Act is currently pending in 17 states.

VIII. Summary and Recommendation

The Act should be refocused to solely regulate athlete agents and not attempt to graft on student athlete regulation.

Consideration should be given to strengthening the protection for student athletes granted in the act by mandating automatic reinstatement of eligibility in the instance of:

1. a void contract
2. a voidable contract, where voided by the student athlete
3. a valid contract which is cancelled by the student athlete within the statutory timeframe.

The manner of cancellation should be clarified.

The legal protection for "intended institutions" should be removed.

The exclusion from the requirement for registration as an agent for individuals acting solely on behalf of a professional sports team or professional sports organization should be removed. The loss of eligibility and economic damages may be caused by such individuals in the same manner as independent agents currently effected by the Act, however, no clear rationale is presented for the disparity in treatment.

IX. For additional information contact

Office of Legal Counsel

Department of Regulation and Licensing

608-267-1803



**MARQUETTE
UNIVERSITY**

Bill Cords

*Director of Intercollegiate Athletics
and Recreational Sports*

September 9, 2003

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The Honorable Sheila Harsdorf
State Capitol
P.O. Box 7882
Madison, Wisconsin 53707-7882

Dear Senator Harsdorf:

I am writing to you regarding 2003 Senate Bill 209 which will be having a hearing in your Committee on Higher Education and Tourism on September 10th. On behalf of Marquette University, I am pleased to extend our support for Senate Bill 209. We are grateful to Senator Kanavas and Representative Wieckert for introducing this legislation.

As you probably already know, Marquette University has a long history of participation in college athletics from our successful and nationally recognized Men's and Women's basketball teams to our other equally important, although perhaps less well known, athletic programs such as Men's golf and Women's volleyball. Senate Bill 209 is good, pro-active legislation. It allows students to concentrate on their higher education as well as their participation in athletics by protecting them from sports agents who may place less importance on their studies versus signing a contract that will provide the agent with a large commission check.

As you know, this legislation would regulate athlete agents who represent student athletes by enacting the Uniform Athlete Agents Act, which was approved in 2000 by the National Conference of Commissioners on Uniform State Laws. We believe this bill creates reasonable registration and agency contract requirements on athlete agents.

On behalf of Marquette University, thank you for allowing me to express our support of the regulation of athletic agents.

Sincerely,

William Cords
Director, Intercollegiate Athletics and Recreational Sports

c: Members of the Wisconsin State Senate Committee on Higher Education and Tourism

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MARQUETTE
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COMPANY NAME: Wisconsin State Senate

FAX (): _____

FROM
NAME: Mary Czech-Mrochinski, Marquette University

PAGES: (INCLUDING COVER SHEET) 2

DATE: 9/9/03

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COMMENTS:

Regarding 2003 Senate Bill 209

The NCAA News News & Features

The NCAA News -- March 18, 2002

Athlete-agent regulation builds state momentum

NCAA staff members are continuing to work state by state to regulate athlete agents by promoting uniform athlete-agent legislation that ultimately would afford student-athletes the same protection nationwide.

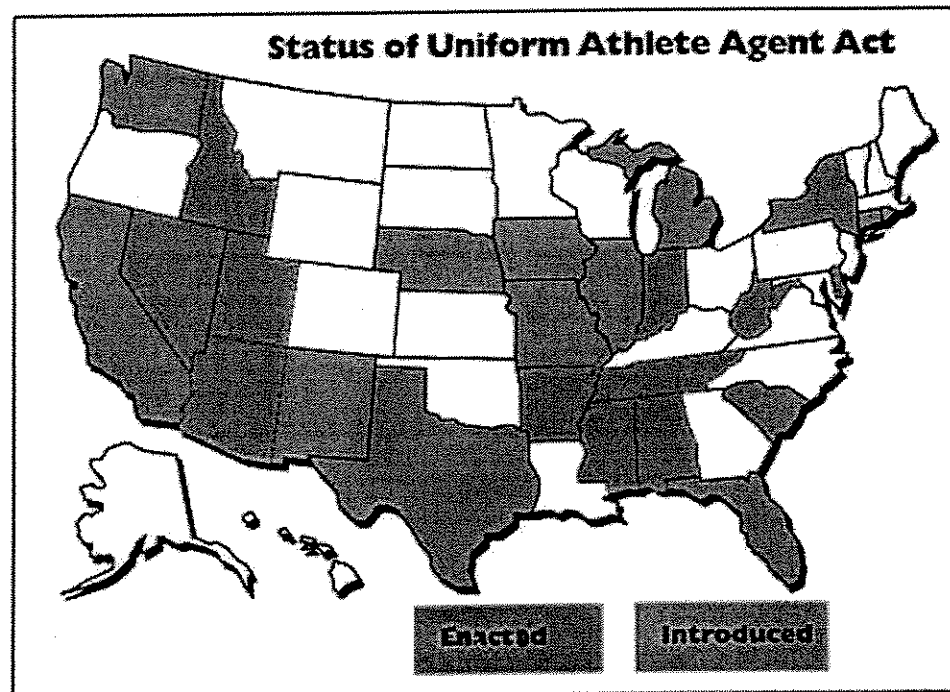
The NCAA agent, gambling and amateurism activities staff, and the NCAA

government relations staff in Washington, D.C., are working together to make the Uniform Athlete Agent Act (UAAA) a reality in every state. The act was developed after the NCAA and several major institutions urged the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 1997 to consider drafting a model law that would provide a uniform system for regulating athlete agents.

The NCCUSL, an organization that drafts uniform and model state laws, convened an 11-person drafting committee that conducted sessions over a three-year period before completing its work in the fall of 2000.

In 2001, the first legislative cycle in which the NCAA and NCCUSL sought state introduction and adoption of the UAAA, 27 states introduced the legislation and 12 jurisdictions adopted it, including Alabama, Arizona, Arkansas, Delaware, Idaho, Indiana, Mississippi, Nevada, Tennessee, U.S. Virgin Islands, Utah and West Virginia.

In 2002, the District of Columbia already has adopted the act, and it has been introduced in 12 more states, including California, Florida, Georgia, Hawaii, Illinois, Iowa, Maryland, Michigan, Minnesota, South Carolina, Washington and Wisconsin. The legislation also is pending in several other states.



In February 2002, the UAAA has seen substantial movement within state legislative bodies. In Michigan, the bill passed through a house subcommittee unanimously after strong testimony from Deana Garner of the NCAA's agent, gambling and amateurism activities staff, and in Illinois and Wisconsin, the bill also moved quickly through committees and seems headed toward passage.



Frank

"We are working exceptionally hard to reach out to state government leaders and stress the importance of this legislation," said Abe L. Frank, the NCAA's director of government relations. "We have had early successes in 2002, but we still realize the huge task ahead of us due to other priority issues and short legislative sessions during this election year."

The UAAA contains a number of important provisions that will protect and educate student-athletes so they are well informed of their available options when they discuss their future. The UAAA requires an athlete agent to provide information that enables student-athletes, their families and university personnel to better evaluate the prospective agent.

The UAAA also requires that written notice be provided to member institutions when a student-athlete signs an agency contract before his or her eligibility has expired. In addition, the UAAA gives authority to the Secretary of State to issue subpoenas that would allow the state to obtain relevant information and material that ensures compliance with the act by an athlete agent.

"But what many perceive as the most important aspect of the UAAA," Frank said, "is the state's ability to impose criminal, civil and administrative penalties with enforcement of the act."



Saum

Since 1981, at least 28 states have had some type of statutes regulating athlete agents. Bill Saum, NCAA director of agent, gambling and amateurism activities, said many of those were vague and often varied considerably from state to state, which had an impact on the number of agents registering with the states. The UAAA would provide an athlete agent one uniform process for each state and would close the loophole allowing athlete agents to contact student-athletes in states that do not have such a law.

"The most important and recognizable benefits of the UAAA are the protections it affords student-athletes," said Saum. "For every athlete agent with the highest level of integrity, there are dozens more that would jump at the opportunity to ensnare a student-athlete with even the slightest possibility for a professional career."

"Unfortunately, the illicit practices of some of these athlete agents and their runners have caused serious problems for student-athletes and their institutions as these agents aggressively pursue the money that accompanies representation of a professional athlete."

Saum said some of the protections include prohibiting agents from giving deceptive information or promises with the intent to induce a student-athlete into signing an agent contract. In addition, he said, agents are prohibited from furnishing anything of value to a student-athlete before signing a contract. Of even greater importance, an agent may not even initiate contact with a student-athlete unless the agent is properly registered under the act.

Also, for those student-athletes who enter into a contract before their eligibility expires, the legislation provides them the right to cancel the contract within two weeks, taking the control out of the agent's hands and giving it back to the student-athlete.

While the main purpose of the UAAA is to protect student-athletes, Frank said NCAA member institutions also benefit from the new legislation.

"The UAAA requires both agents and student-athletes to notify the college or university within 72 hours of signing an agent contract," he said. "The act also provides member institutions with a right of civil action against the agent or former student-athlete for any damages caused by a violation of this act."

More information on the UAAA can be found on NCAA Online (www.ncaa.org). Click on "enforcement and reinstatement" and then "agents and amateurism" and then the "Uniform Athlete Agent Act."

[Open in new window](#)

[NCAA Online Home Page](#)

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> A Few Facts About The...

UNIFORM ATHLETE AGENTS ACT

PURPOSE:

This act provides for the uniform registration, certification, and background check of sports agents seeking to represent student athletes who are or may be eligible to participate in intercollegiate sports. The act also imposes specified contract terms on these agreements to the benefit of student athletes, and provides educational institutions with a right to notice along with a civil cause of action for damages resulting from a breach of specified duties.

ORIGIN:

Completed by the Uniform Law Commissioners in 2000.

APPROVED BY:

American Bar Association

SUPPORTED BY:

National Collegiate Athletic Association

STATE ADOPTIONS:

Alabama	Indiana	North Dakota
Arizona	Kansas	Oklahoma
Arkansas	Kentucky	Pennsylvania
Delaware	Maryland	Tennessee
District of Columbia	Minnesota	Texas
Florida	Mississippi	Utah
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Section Title: Introductions & Adoptions Of Uniform Acts.

> Summary

UNIFORM ATHLETE AGENTS ACT

With the proliferation of professional sport franchises in the United States, and the immense sums now paid for commercial endorsement contracts, it is no surprise that the commercial marketplace in which athlete has become very competitive. And while maximizing the income of one's clients is certainly the "American well as good business practice), the recruitment of a student-athlete while he or she is still enrolled in an institution may cause substantial eligibility or other problems for both the student and the school, especially if the athlete is not aware of the implications of signing the agency agreement or where the agency is established with the athletic director of the school. The problem becomes even more acute where an unscrupulous agent recruits a student. While several states have enacted legislation to address these issues, agent registration and disclosure requirements vary greatly from state to state, causing confusion among student athletes, athletic department educational institutions, and the agents themselves.

The Uniform Athlete Agents Act provides for the uniform registration, certification, and background checks for agents seeking to represent student athletes who are or may be eligible to participate in intercollegiate sports. It specifies contract terms on these agreements to the benefit of student athletes, and provides educational institutions with a right to notice along with a civil cause of action for damages resulting from a breach of specified duties.

The act requires agents to disclose their training, experience, and education, whether they or an associate have been convicted of a felony or crime of moral turpitude, have been administratively or judicially determined to have made deceptive representations, have had their agent's license denied, suspended, or revoked in any state, or are the subject or cause of any sanction, suspension, or declaration of ineligibility. Agents are required to maintain records and other specified records for a period of five years, including information about represented athletes and recruitment expenditures, which would be open to inspection by the state.

While the act imposes significant disclosure, registration, and record-keeping requirements on athlete agents, those agents who are issued a valid certificate of registration or licensure in one state would be able to cross-file that application for renewal thereof) in all other states that have adopted the act. This aspect of the act at once simplifies regulatory compliance for agents, while at the same time facilitates the ability of all jurisdictions to obtain dependable information on an agent's professional conduct in other states.

Because the potential loss of intercollegiate eligibility is a serious, and often unexpected, effect of entering into an agent contract, the act provides student-athletes with a statutory right to cancel an agency contract within a specified period after the contract is signed without penalty. In addition, athlete-agent contracts subject to the act are required to specify the amount and method of calculating the agent's compensation, the name of any unregistered person receiving compensation because the athlete signed the agreement, a description of reimbursable expenses and services provided, as well as warnings disclosing the cancellation and notice requirements imposed under the act.

The potential loss of a student-athlete's eligibility is also a serious concern for athletic programs at educational institutions - accordingly, the act requires both the agent and the student-athlete to give notice of the con

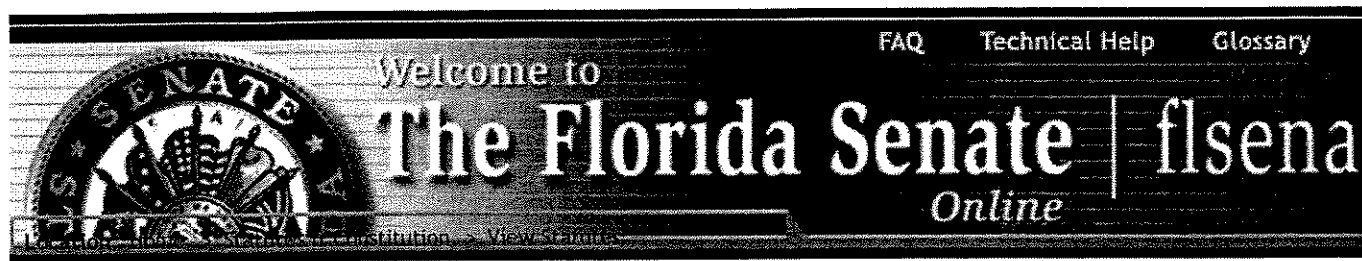
athletic director of the affected educational institution within 72 hours of signing the agreement, or before the next scheduled athletic event, whichever occurs first. Where applicable, the agent must also provide this school where he or she has reasonable grounds to believe the athlete intends to enroll. The act would also give educational institutions with a statutory right of action against an athlete agent or former student athlete (joint, liability) for damages, including losses and expenses incurred as a result of the educational institution penalized, disqualified, or suspended from participation by an athletics association or conference, or as a result of reasonable self-imposed disciplinary actions taken to mitigate sanctions, as well as associated party costs and attorney's fees.

Finally, the act prohibits athlete agents from providing materially false or misleading information or making a false promise or representation with the intent of inducing a student athlete to enter into an agency contract without furnishing anything of value to a student athlete or another person before that athlete enters into an agency contract. The act provides that an athlete agent may not intentionally initiate contact with a student athlete unless registered with the appropriate state agency, and may not refuse or willfully fail to retain or permit inspection of required records, fail to register with the appropriate state agency, provide materially false or misleading information in an application for registration or renewal thereof, postdate an agency contract, or fail to notify a student athlete (prior to signing) that signing an agency contract will make the student athlete ineligible to participate as a student athlete in that sport. The act would impose civil penalties for violations of these prohibitions.

The Uniform Athlete Agents Act provides important protections for student-athletes and the educational institutions where they compete, creates a uniform body of agent registration information for use by state agencies, and addresses the regulatory environment faced by legitimate sports agents.

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Title XXXII	Chapter 468
REGULATION OF PROFESSIONS AND OCCUPATIONS	MISCELLANEOUS PROFESSIONS AND OCCUPATIONS

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468.4562 Civil action by institution.--

(1) A college or university may sue for damages, as provided by this section, any pe violates this part. A college or university may seek equitable relief to prevent or mi 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 ac person, the college or university is penalized, disqualified, or suspended from partic intercollegiate athletics by a national association for the promotion and regulation c intercollegiate athletics, by an intercollegiate athletic conference, or by reasonable disciplinary action taken to mitigate sanctions likely to be imposed by such organiza because of that penalty, disqualification, suspension, or action the institution:

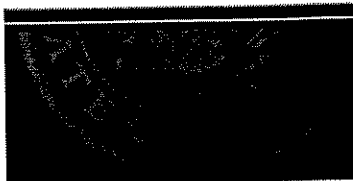
- (a) Loses revenue from media coverage of a sports contest;
 - (b) Loses the right to grant an athletic scholarship;
 - (c) Loses the right to recruit an athlete;
 - (d) Is prohibited from participating in postseason athletic competition;
 - (e) Forfeits an athletic contest; or
 - (f) Otherwise suffers 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 or by the exercise of reasonable diligence would have discovered, the violation by the agent or former student athlete.

(5) Any liability of the athlete agent or the former student athlete under this section is not joint.

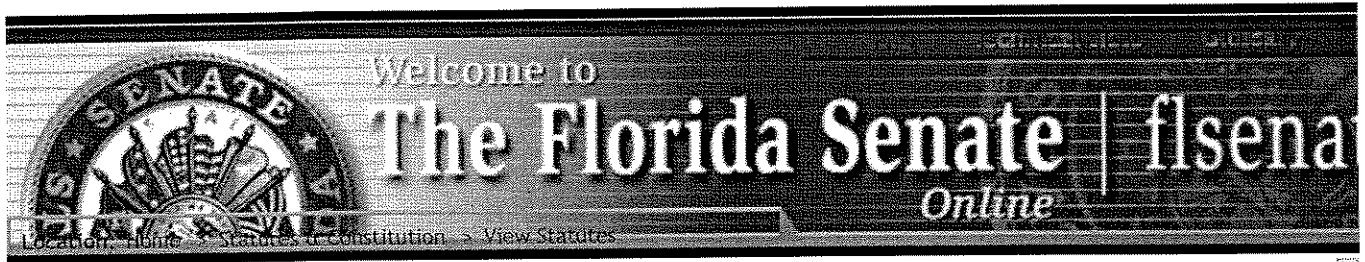
(6) This part does not restrict rights, remedies, or defenses of any person under law.

History.--s. 9, ch. 95-307; s. 71, ch. 2000-356; s. 6, ch. 2002-24.



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The 2003 Florida Statutes

Title XXXII Chapter 468
 REGULATION OF PROFESSIONS AND OCCUPATIONS MISCELLANEOUS PROFESSIONS AND OCCUPATIONS

468.452 Definitions.--For purposes of this part, the term:

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- (1) "Agent contract" means a contract or agreement in which a student athlete authorizes the student athlete agent to represent the student in the marketing of the student's athletic ability and 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, or attempts to obtain employment or promotional fees or benefits for a student athlete on a professional sports team or as a professional athlete, or with any promoter who markets the student athlete's athletic ability or athletic reputation. This term does not include a spouse, parent, 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, 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 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 or 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.

History.--s. 2, ch. 88-229; s. 1, ch. 89-296; s. 4, ch. 91-429; s. 30, ch. 94-119; s. 2,

Official Code 43-4A

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43-4A-1 G

*** CODE SECTION *** 12/03/01

43-4A-1.

This chapter shall be known and may be cited as the "Georgia Athlete Agents Regulatory Act of 1988."

43-4A-2 G

*** CODE SECTION *** 12/03/01

43-4A-2.

As used in this chapter, the term:

(1) "Agent contract" means any contract or agreement pursuant to which an athlete authorizes or empowers an athlete agent to negotiate or solicit on behalf of the athlete with one or more professional sports teams for the employment of the athlete by one or more professional sports teams or to negotiate or solicit on behalf of the athlete for the employment of the athlete as a professional athlete.

(2) "Athlete" means an individual who is eligible to participate in any intercollegiate sport and who is currently enrolled as a student at an institution of higher education or has signed a national grant-in-aid with an institution of higher education.

(3) "Athlete agent" means a person who, directly or indirectly, recruits or solicits an athlete to enter into an agent contract or professional sports services contract with that person or who for a fee procures, offers, promises, or attempts to obtain employment for an athlete with a professional sports team. The term "athlete agent" does not include the owner, employee, or other representative of a professional sports team, provided that such owner, employee, or representative does not recruit or solicit such athlete to enter into an agent contract or professional sports services contract or for a fee does not procure, offer, promise, or attempt to obtain employment for such athlete with a professional sports team.

(4) "Athletic department" means the entity exercising control over the intercollegiate sports program at an institution of higher education, including, but not limited to, an athletic association, an athletic department, or an athletic foundation.

(5) "Athletic director" means the representative of the intercollegiate sports program at an institution of higher

education as identified on the annual report filed with the commission.

(6) "Commission" means the Georgia Athlete Agent Regulatory Commission created in Code Section 43-4A-3.

(7) "Institution of higher education" means a public or private postsecondary school located in this state.

(8) "Person" means any individual, company, corporation, association, partnership, or other legal entity.

(9) "Professional sports services contract" means 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.

43-4A-3 G

*** CODE SECTION *** 12/03/01

43-4A-3.

(a) There is created a commission for the regulation of athlete agents in the State of Georgia to be known as the Georgia Athlete Agent Regulatory Commission. The commission shall consist of six members with an interest in college athletics to be appointed as follows:

(1) The Governor shall appoint two commission members;

(2) The President of the Senate shall appoint two commission members; and

(3) The Speaker of the House of Representatives shall appoint two commission members.

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 all original appointments shall be September 1, 1988.

(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 chairman and a

vice-chairman.

(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 G

*** CODE SECTION *** 12/03/01

43-4A-4.

(a) No athlete agent shall contact an athlete, either directly or indirectly, or otherwise engage in or carry on the occupation of an athlete agent with an athlete without first registering with the commission.

(b) Each institution of higher education shall file an annual report with the commission, on a form provided by the commission, identifying the athletic director for said institution.

43-4A-5 G

*** CODE SECTION *** 12/03/01

43-4A-5.

(a) A written application for registration or registration renewal shall be made to the commission on the form prescribed by the commission and shall, at a minimum, state the following:

(1) The name of the applicant and address of the applicant's residence;

(2) The address where the business of the athlete agent is to be conducted;

(3) The business or occupation engaged in by the applicant for at least two years immediately preceding the date of application;

(4) Such biographical information on the applicant as may be deemed necessary by the commission; and

(5) The names and addresses of all persons, except bona fide employees on stated salaries, who are financially interested, either as partners, members of a limited liability company, associates, or profit sharers, in the operation of the business of the athlete agent.

(b) The application for registration shall be accompanied by

affidavits or certificates of completion of any and all formal training or practical experience in any one of the following specific areas: contracts, contract negotiation, complaint resolution, arbitration, or civil resolution of contract disputes. The commission, in evaluating the applicant's qualifications, may consider any other relevant training, education, or experience to satisfy this requirement.

43-4A-6 G
*** CODE SECTION *** 12/03/01

43-4A-6.

Upon receipt of an application for registration, the commission may evaluate and investigate the education, training, experience, and character of the applicant and may examine the premises designated in the application to verify it to be the principal place of business in which the applicant proposes to conduct business as an athlete agent.

43-4A-7 G
*** CODE SECTION *** 12/03/01

43-4A-7.

(a) The commission, by a majority of its members present and voting, may refuse to grant a registration to an applicant therefor or may revoke a registration of a person registered by the commission or may discipline a person registered by the commission upon making a finding that the applicant or registrant or his or her representative or employee:

- (1) Has made a material false, misleading, deceptive, untrue, or fraudulent representation as an athlete agent or in any document connected therewith or practiced fraud or deceit or made a false statement of a material nature in his or her application for registration or made a false or deceptive statement of a material nature on an application for biennial registration renewal with the commission;
- (2) Has ever misappropriated funds or engaged in other specific acts such as embezzlement, theft, or fraud which would render him or her unfit to serve in a fiduciary capacity;
- (3) Has engaged in such other conduct that has a significant adverse impact on his or her creditability, honesty, integrity, or competence to serve in a fiduciary capacity;
- (4) Has engaged in conduct which results in a violation of any rule or regulation promulgated by an intercollegiate sports governing body;
- (5) Has been convicted of a crime covered by Article 2 of Chapter 12 of Title 16 or has been convicted of a gambling offense in another state;
- (6) Has been convicted of violating a statute, law, or any rule or

regulation of this state, any other state, the commission, the United States, or any other lawful licensing authority, without regard to whether the violation is criminally punishable, which law, rule, or regulation relates to or in part regulates athlete agents, or violating a lawful order of the commission previously entered by the commission in a disciplinary hearing;

(7) Is unwilling to swear or affirm that he or she will comply with such rules and standards of conduct for athlete agents as may from time to time be promulgated by the commission;

(8) Has engaged in conduct which results in an athlete's losing eligibility to participate in intercollegiate sports contests as a member of a sports team of an institution of higher education;

(9) Except as provided in subsection (b) or (c) of this Code section, has directly or indirectly contacted an athlete prior to the completion of the athlete's last intercollegiate contest for the purpose of entering or soliciting entry into an agent contract;

(10) Has accepted as a client an athlete referred by and in exchange for any consideration made to an employee or coach of an institution of higher education;

(11) Has offered anything of value to any person to induce an athlete to enter into an agent contract; or

(12) Has postdated an agent contract.

(b) This chapter does not prohibit an athlete agent from sending to an athlete written materials, provided that the athlete agent simultaneously sends an identical copy of such written materials to the athletic director of the institution of higher education in which the athlete is enrolled, or with which the athlete has signed a national grant-in-aid, or to such athletic director's designee.

(c) This chapter does not prohibit an athlete agent from contacting an athlete for the purpose of entering or soliciting entry into an agent contract, provided that the athlete or the athlete's parent or guardian initiates the contact and the athlete agent gives prior notice of his or her contact to the athletic director of the institution of higher education in which the athlete is enrolled, or with which the athlete has signed a national grant-in-aid, or to such athletic director's designee.

(d) 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 is required to 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 so requests in writing.

43-4A-8 G

*** CODE SECTION *** 12/03/01

43-4A-8.

When the commission finds that a person is unqualified to be granted a registration or finds that a registrant should be disciplined pursuant to the laws of this state, the commission may take any one or more of the following actions:

- (1) Refuse to grant or renew a registration;
- (2) Administer a public reprimand;
- (3) Suspend any registration for a definite period of time or for an indefinite period of time in connection with any condition which may be attached to the restoration of said registration;
- (4) Limit or restrict any registration as the commission deems necessary for the protection of the public;
- (5) Revoke any registration;
- (6) Impose a fine not to exceed \$100,000.00 for each violation of a law, rule, or regulation; or
- (7) Impose any condition on a registration, including, but not limited to, requiring a surety bond in excess of \$10,000.00, which the commission may reasonably deem necessary for the protection of the public.

43-4A-9 G

*** CODE SECTION *** 12/03/01

43-4A-9.

A registration shall be valid for a period of up to two years. Renewal of a registration shall require the filing of an application for renewal, and a renewal bond, if applicable. A renewal fee shall be paid by the athlete agent at the time of filing such application.

43-4A-10 G

*** CODE SECTION *** 12/03/01

43-4A-10.

Upon receipt by the commission of a completed application for registration, surety bond, and fee and after approval of the chairman of the commission, the division director may in his or her discretion issue a temporary registration to an 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 shall not be recorded. A temporary registration shall be subject to revocation in the same manner as a permanent registration.

43-4A-11 G

*** CODE SECTION *** 12/03/01

43-4A-11.

(a) Any person who engages in the occupation of an athlete agent with an athlete without complying with this chapter shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not less than \$5,000.00 nor more than \$100,000.00 or by imprisonment from one to five years, or both.

(b) Any agent contract or professional services contract that is negotiated for, with, or on behalf of an athlete by an athlete agent who has failed to comply with the registration requirements of subsection (a) of Code Section 43-4A-4 is void.

43-4A-12 G

*** CODE SECTION *** 12/03/01

43-4A-12.

The commission is authorized to charge an application fee, temporary registration fee, registration fee, registration renewal fee, or similar fees and may establish the amount of the fees to be charged. Each fee so established shall be reasonable and shall be determined in such a manner that the total amount of fees charged by the commission shall approximate the total of the direct and indirect costs to the state of the operations of the commission.

43-4A-13 G

*** CODE SECTION *** 12/03/01

43-4A-13.

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-16 or would be grounds for revocation of a license under Code Section 43-4A-7 or 43-4A-8. 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 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.

43-4A-14 G

*** CODE SECTION *** 12/03/01

43-4A-14.

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.

43-4A-15 G

*** CODE SECTION *** 12/03/01

43-4A-15.

Each registration shall contain the following:

- (1) The name of the registrant;
- (2) A designation of the address of the place in which the registrant is authorized to carry on business as an athlete agent; and
- (3) The registration number and date of issuance of the registration.

43-4A-16 G

*** CODE SECTION *** 12/03/01

43-4A-16.

(a)(1) An athlete agent who intends to sign an athlete to an agent contract prior to the termination of the athlete's eligibility to participate in intercollegiate sports contests at an institution of higher education shall notify the commission in writing. The athlete agent shall provide the name of the athlete and the athlete's institution of higher education and the sport or sports in which the athlete competes at such institution of higher education. The commission shall within seven business days notify in writing the athletic director of the institution of higher education attended by the athlete, provided that said institution has filed the annual report required by subsection (b) of Code Section 43-4A-4. Except as otherwise provided in this subsection for notification of the athletic director, the notice filed by the athlete agent with the commission shall be confidential information and not a public record. The athlete agent shall not be permitted to sign the athlete to an agent contract until the expiration of 30 days from the date that the commission received notice from the agent of the intention to sign such contract.

(2) An athlete agent who signs an athlete to an agent contract prior to the termination of the athlete's eligibility to participate in intercollegiate sports contests at an institution of higher education shall provide written notice of the contract to the athletic director of the institution of higher education in which the athlete is enrolled or with which the athlete has signed a national grant-in-aid. The athlete agent must give the notice before the contracting athlete practices or participates in any intercollegiate athletic event or within 72 hours after entering into the contract, whichever comes first.

(b) Prior to the signing of an agent contract, an athlete agent shall not compensate any athlete or take any other action in connection with such athlete which may jeopardize such athlete's eligibility to participate in intercollegiate sports contests at an institution of higher education.

(c) If an athlete agent fails to comply with the provisions of subsection (a) or (b) of this Code section, such athlete agent shall be liable for damages in the amount of the bond deposited pursuant to Code Section 43-4A-13 to any athletic department for which an athlete participates, which athlete was the subject of the agent contract or consideration or other action resulting in a violation of this Code section. The provisions of this subsection shall apply regardless of whether an athlete loses any eligibility to participate in intercollegiate sports contests at such institution of higher education.

(d) If an athlete agent fails to comply with the provisions of subsection (a) or (b) of this Code section, any agent contract that is negotiated by said athlete agent is void. The provisions of this subsection shall apply regardless of whether an athlete loses any eligibility to participate in intercollegiate sports contests at such institution of higher education.

(e) If an athlete agent fails to comply with the provisions of subsection (a) or (b) of this Code section, said athlete agent is subject to 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 by an athlete before completion of the athlete's last intercollegiate sports contest.

43-4A-16.1 G

*** CODE SECTION *** 12/03/01

43-4A-16.1.

(a) An agent contract must be in writing, state the fees and percentages to be paid by the athlete to the athlete agent, and have a notice printed near the athlete's signature containing the following statement in ten-point boldface type:

"NOTICE TO THE ATHLETE: WHEN YOU SIGN THIS CONTRACT, YOU WILL LIKELY IMMEDIATELY LOSE YOUR ELIGIBILITY TO COMPETE IN INTERCOLLEGIATE ATHLETICS. 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 IN WRITING OF YOUR DESIRE TO CANCEL NOT LATER THAN THE FIFTEENTH DAY AFTER THE DATE YOU SIGN THIS CONTRACT. HOWEVER, EVEN IF YOU CANCEL THIS CONTRACT, THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION OR THE CONFERENCE TO WHICH YOUR COLLEGE OR UNIVERSITY BELONGS MAY NOT RESTORE YOUR ELIGIBILITY TO PARTICIPATE IN INTERCOLLEGIATE ATHLETICS."

(b) An agent contract which does not meet the requirements of this Code section is void and unenforceable.

(c) The athlete shall have the right to rescind an agent contract by giving written notice to the athlete agent of the athlete's rescission of the contract within 15 days after the date on which

the agent signs the contract. The athlete may not under any circumstances waive the athlete's right to rescind the agent contract.

(d) A postdated agent contract is void and unenforceable.

(e) An athlete agent shall not enter into an agent contract that purports to take effect or takes effect at a future time after the athlete no longer has remaining eligibility to participate in intercollegiate athletics. Such a contract is void and unenforceable.

43-4A-17 G

*** CODE SECTION *** 12/03/01

43-4A-17.

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.

43-4A-18 G

*** CODE SECTION *** 12/03/01

43-4A-18.

Repealed.

43-4A-19 G

*** CODE SECTION *** 12/03/01

43-4A-19.

(a) This chapter shall not apply to an athlete who has participated for at least one full season as a member of a team which is part of an organized nonscholastic association whether amateur or semiprofessional with respect to such sport nor shall it apply to the owner or coach of such athlete's team when representing such athlete.

(b) This chapter shall not be applicable to a person or agreement involving an athlete and an amateur athletic team.

43-4A-20 G

*** CODE SECTION *** 12/03/01

43-4A-20.

(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.

Testimony of
State Representative Steve Wieckert
Regarding
SB 209 - Student Athlete Protection Act
Before the
Senate Committee on Higher Education and Tourism

September 10, 2003

Chairwoman Harsdorf and members of the Committee,

I appreciate the opportunity to testify today about a bill that has been in the making for multiple sessions. I am happy to finally see countless hours of hard work on the parts of many come to fruition.

I would also like to thank Senator Ted Kanavas for authoring this legislation in the Senate this session. The Assembly will be having a hearing on this bill on October 7.

In the past session, this legislation passed the Assembly with over 95 votes and was heard by a Senate committee and was approved unanimously. However, it never received Senate floor action before the session ended.

I also would like to thank the University of Wisconsin Athletic Department and Marquette University Athletic Department for their very strong and active support for this legislation.

I would also like to thank the NCAA and the National Conference of Commissioners on Uniform State Laws for helping to draft and advance this bill. Mike Kerr, a representative from the commissioners, is here today to testify in favor of it. Thank you Mike, for making your way up from Chicago.

The purpose of this bill is quite simple: it is designed to protect Wisconsin's student athletes and schools from the devastation that can occur to both as the result of under-the-table dealings by sports agents. The bill itself is a product of the widely-respected National Conference of Commissioners on Uniform State Laws.

The bill requires athlete agents to register with the Department of Regulation and Licensing. They will be required to disclose their training, education, and experience, as well as to identify their business partners. This is vital, as agents often work on behalf of a larger firm. This disclosure will allow the Department to investigate an agent's background to make certain that they have credibly and honestly represented themselves in the past.

The bill also requires that agency contracts make it abundantly clear to the student athlete that, should they sign the contract, they may lose their ability to compete in intercollegiate athletics, and gives them the right to cancel any such contract within fourteen days of signing should they change their mind. It also requires that both parties promptly notify a school's athletic director of the decision, so that the school is not jeopardized by having an ineligible athlete compete.

There are many benefits to adopting this bill. The primary purpose, of course, is to protect student-athletes and educational institutions from agents who may participate in illegal practices. It also protects colleges and universities from negative publicity and sanctions that come from playing an illegal athlete. In the past, schools have had to forfeit entire seasons and have lost playoff eligibility. These sanctions can cost school millions of dollars.

SB 209 provides for reciprocal registration and fees between states that have similar laws to encourage efficiency and cost-effectiveness. It also gives student athletes, parents, and institutions access to the information contained in the agent application. If an agent will be representing an athlete, it is only fair that the student and his or her family have the ability to find out the background of the person that could potentially be representing the student.

In the 2001 NFL draft, eight players from the University of Wisconsin football team were selected, including two in the first round. The increasing prominence of the Wisconsin and Marquette basketball teams will also increase the attention that agents are paying to athletes in the State of Wisconsin. It is important to move on this legislation now so that we can have these protections in place for our student athletes and our schools.

This bill is supported by numerous organizations, including:

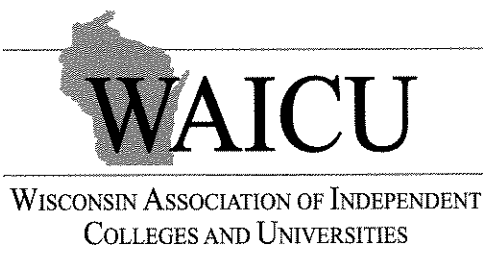
- NCAA

- National Junior College Athletic Association
- University of Wisconsin-Madison
- University of Wisconsin-Green Bay
- University of Wisconsin-Milwaukee
- Marquette University
- Big Ten
- Conference USA
- Wisconsin Interscholastic Athletic Association (WIAA)
- Wisconsin Intercollegiate Athletic Conference (WIAC).

I have been working on this legislation for the last four years. This is model NCAA legislation. If we had enacted this when it was first introduced, Wisconsin would have been one of the first states in the nation to have this protection for its student athletes. However, to show the importance and popularity of this legislation in the last few years, 28 states have enacted this model bill.

I would be happy answer any questions you might have at this time.

ALVERNO COLLEGE
BELOIT COLLEGE
CARDINAL STRITCH UNIVERSITY
CARROLL COLLEGE
CARTHAGE COLLEGE
CONCORDIA UNIVERSITY
EDGEWOOD COLLEGE
LAKELAND COLLEGE
LAWRENCE UNIVERSITY
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MILWAUKEE INSTITUTE OF ART & DESIGN
MILWAUKEE SCHOOL OF ENGINEERING
MOUNT MARY COLLEGE
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ST. NORBERT COLLEGE
SILVER LAKE COLLEGE
VITERBO UNIVERSITY
WISCONSIN LUTHERAN COLLEGE

TESTIMONY

on

2003 Senate Bill 209

by

Paul Nelson, Vice President for Public Policy
Wisconsin Association of Independent Colleges and Universities

Senate Committee on Higher Education and Tourism

September 10, 2003

Chairperson Harsdorf and members of the committee, my name is Paul Nelson. I am the Vice President for Public Policy for the Wisconsin Association of Independent Colleges and Universities, or WAICU, representing the 20 private colleges and universities in Wisconsin and their more than 54,000 students.

I am testifying today in favor of Senate Bill 209, the bill that would protect the interests of Wisconsin student athletes and their colleges or universities by regulating athlete agents. Among our members this proposed legislation would apply to the only one that is a Division 1 school, Marquette University, but we are testifying today not just on Marquette's behalf but because we believe this bill represents good public policy for higher education.

There is no denying that the market for the recruitment of college athletes is highly competitive. There are more examples every year of college athletes who are even talented enough to move directly into professional sports before their college careers are over, and the competition to identify and recruit these athletes is increasing. There are also numerous examples whether, because of confusion or in some cases unscrupulous agents, recruiting practices result in loss of eligibility, creating serious problems not only for the athlete but also for the college or university for which he plays.

Adoption of this model legislation, already enacted by 26 other states, will go a long way to protecting Wisconsin's college athletes and their institutions, and eliminating confusion for athlete agents who are now subject to an array of statutes that vary from state to state.

Jim Doyle
Governor

**WISCONSIN DEPARTMENT OF
REGULATION & LICENSING**

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Donsia Strong Hill
Secretary



SENATE COMMITTEE ON HIGHER EDUCATION AND TOURISM

Senator Sheila Harsdorf, Chair

**Statement of Donsia Strong Hill, Secretary, Department of Regulation and
Licensing**

**2003 Senate Bill 209
relating to regulating athlete agents**

**300 Southeast, Capitol
Wednesday, September 10, 2003 11:00 A. M.**

For information only

Chairperson Harsdorf and member of the Committee, thank you for the opportunity to appear on behalf of the Department of Regulation and Licensing to comment on Senate Bill 209.

Recruitment of student athletes for professional sports is extremely competitive. This competition sometimes involves unscrupulous practices by athlete agents, leading student athletes to sign agent contracts without being fully aware of the consequences. An athlete who retains an agent while enrolled in an educational institution may lose eligibility to compete as a student athlete. The school's athletic program may also be penalized, especially if the school is not aware of the contract and the student continues to compete as a student athlete.

Senate Bill 209 is based on the Uniform Athlete Agents Act drafted by the National Conference of Commissioners on Uniform State Laws. One stated purpose of the bill is to protect the student athlete and the school by requiring athlete agents to inform students of the potential consequences of signing a contract for representation, giving notice to the educational institution and regulating the practices of the athlete agents through registration requirements.

Despite this stated purpose of student athlete protection, portions of Senate Bill 209 should be carefully reviewed to insure that the legislature's intent is met by this Bill, and that potential pitfalls and ramifications are fully considered.

The Bill lacks clear guidance for student athletes pertaining to regaining eligibility in the instance of a void or voidable athlete agent contract. It is also silent regarding a student athlete's civil liability to the educational institution in such instance, if such a contract is coupled with a notice violation to an educational institution.

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Statement of the Department of Regulation and Licensing on 2003 SB 209

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It is not clear whether a void or voidable athlete agent contract creates ramifications for eligibility with the NCAA or other groups, and what those ramifications might be. The Bill is simply silent in this instance. If one goal of the Bill is to protect student athletes from agent abuses, the Bill should be clarified regarding this important issue of the loss and regaining of eligibility and the student's liability for civil damages. Currently, no express safe harbor to reinstate eligibility exists. This may render such a right illusory. It is simply unknown what NCAA or other third party eligibility standards may apply. Such standards, whatever they are, may also change based on the sole discretion of the third party, thus potentially creating a result that the legislature did not intend.

The manner to exercise the cancellation right is not as explicit as with other consumer protection statutes.

Additionally, the Bill does not account for the fact that the student athlete may commit a violation and incur liability based upon the wrong counsel of an agent. Typically, a class of protected persons is created for the purpose of protection from the unwarranted acts of other regulated persons, not for the purpose of additional liability. The effect of this Bill should be carefully considered because it creates this potential civil liability for the student athlete arising out of the wrongful act of the agent.

The Department of Regulation and Licensing takes no position on Senate Bill 209 because of its actual and potential effects upon student athletes.

Thank you for the opportunity to appear today.



TO: Senator Sheila Harsdorf, Chair ✓
Senator Dale Schultz
Senator Rob Cowles
Senator Chuck Chvala
Senator Roger Breske

FROM: Kristi Thorson *Kristi*
Assistant Director, State Relations

DATE: February 3, 2004

RE: Senate Bill 209--Athlete Agents

As you are aware, tomorrow you will be taking up Senate Bill 209, which regulates athlete agents. UW-Madison strongly supports this legislation, which will protect our student athletes from unscrupulous agents and the related potential for damage to the students' collegial and professional sports opportunities. The bill also helps to protect the institution from serious consequences when sports recruiters do not follow approved recruiting rules, including loss of sports scholarships and recorded victories being changed to losses. Attached please find a copy of a letter UW-Madison Athletic Director Pat Richter sent to Representative Wieckert in support of this legislation.

I hope you will support Senate Bill 209 and vote to move it forward so that legislation can be signed into law this session. If you have any questions about this bill and its impact on UW-Madison student-athletes, please call me at 262-4809.

Attachment

CC: Senator Ted Kanavas
Representative Steve Wieckert

Office of the Chancellor

Bascom Hall University of Wisconsin-Madison 500 Lincoln Drive Madison, Wisconsin 53706-1380
608/262-9946 Fax: 608/262-8333 TTY: 608/263-2473



WISCONSIN ATHLETICS

University of Wisconsin-Madison
Division of Intercollegiate Athletics
1440 Monroe Street
Madison, WI 53711-2080

Pat Richter
Director of Athletics
(608) 262-1866

April 9, 2003

The Honorable Steve Wieckert
State Representative
State Capitol

Dear Representative Wieckert,

On behalf of the University of Wisconsin Athletic Department, I am writing to express our strong support for the Student-Athlete Protection legislation (LRB 1010) you have proposed.

Your legislation, which requires Sports Agents to register with the Wisconsin Department of Agriculture, Trade and Consumer Protection, will be an important step in curbing the abuses of sports agents in college athletics. Sports agents would also be required to contact the Athletic Director or the Head Coach of the sport before he/she has any contact with a student-athlete.

Currently, sports agents who refuse to respect the integrity of the system are a real problem that colleges have to deal with concerning their elite athletes. Education of student-athletes helps alleviate this problem, but your legislation will also provide a major deterrent to the unscrupulous agents who prey on the unsuspecting athlete. It will put real teeth into our efforts to protect student-athletes.

I hope your colleagues will support this needed legislation. We greatly appreciate the time you have taken to move this proposal forward.

Sincerely,

Pat Richter
Director of Athletics
University of Wisconsin