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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2005-06

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on Colleges and Universities...

COMMITTEE NOTICES ...

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INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

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 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
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- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (November 2012)

Assembly

Record of Committee Proceedings

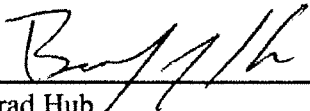
Committee on Colleges and Universities

Clearinghouse Rule 04-110

Relating to the licensure and regulation of athlete agents.
Department of Regulation and Licensing

February 03, 2005 Referred to Committee on Colleges and Universities.

April 1, 2005 No action taken.



Brad Hub
Committee Clerk



DATE: February 3, 2005

TO: Brad Hub

Committee on Colleges and Universities

FROM: Patrick E. Fuller, Assembly Chief Clerk

RE: Clearinghouse Rules Referral

The following Clearinghouse Rule has been referred to your committee.

CLEARINGHOUSE RULE 04-110

AN ORDER to create chapters RL 150 to 154, relating to the licensure and regulation of athlete agents.

Submitted by **Department of Regulation and Licensing.**

Report received from Agency on **January 25, 2005.**

To committee on **Colleges and Universities.**

Referred on **Thursday, February 3, 2005.**

Last day for action - **Monday, March 7, 2005.**

Under section 227.19 (4) of the Wisconsin Statutes, your committee has 30 days to take action or get an extension. The day **after** the official referral date is day one of your review period. Therefore, the 30th day should fall four weeks and two days after the referral date. For example, for Clearinghouse Rules referred on a Monday, a Wednesday would be your 30th day. For Clearinghouse Rules referred on a Tuesday, a Thursday would be your 30th day. For Clearinghouse Rules referred on a Wednesday, a Friday would be your 30th day. For Clearinghouse Rules referred on a Thursday or Friday, your 30th day would fall on a weekend. Therefore, your time would expire on the next working day (Monday) as provided for in s. 990.001 of the Wisconsin Statutes. Also, if the 30th day falls on a legal holiday, time would expire on the next working day.

Section 227.19 **requires** you to notify each member of your committee that you have received this Clearinghouse Rule. Although some committee chairs do so, you are not required to send a copy of the text of the rule to each member at this time. Your notice could state that members should contact you if they wish to receive a hard copy of the rule. **(Please note that the text of Rules beginning with the prefix "01" is available online in the Clearinghouse Rules infobase in FOLIO.)** Please put a copy of your official notification memo in the rule jacket.

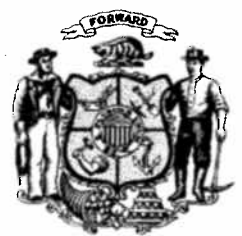
Three copies of the Clearinghouse Rule and its accompanying documents are contained in the jacket. If you wish to have your Legislative Council attorney review the Clearinghouse Rule, send him/her a copy. I only need one copy remaining in the jacket when you report it out of committee at the end of the review period.

The identical process is happening simultaneously in the Senate. Keep track of their action on the rule.

For assistance with the Clearinghouse Rule process, please consult Ken Stigler (6-2406) or your Legislative Council attorney. If you wish to learn more on this subject, read section 227.19 of the Wisconsin Statutes or part 2 of the *Administrative Rules Procedures Manual* written by the Revisor of Statutes Bureau and the Wisconsin Legislative Council staff.



WISCONSIN STATE LEGISLATURE



**STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING**

**IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF REGULATION
DEPARTMENT OF REGULATION : AND LICENSING ADOPTING RULES
AND LICENSING : (CLEARINGHOUSE RULE 04-110)**

TO: John Gard
Speaker of the Assembly
Room 215 West, State Capitol
Madison, Wisconsin 53702

PLEASE TAKE NOTICE that the DEPARTMENT OF REGULATION AND LICENSING is submitting in final draft form rules relating to the licensure and regulation of athlete agents.

Please stamp or sign a copy of this letter to acknowledge receipt. If you have any questions concerning the final draft form or desire additional information, please contact Pamela Haack at 266-0495.

Thank you.

**STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING**

**IN THE MATTER OF RULE-MAKING : REPORT TO THE LEGISLATURE
PROCEEDINGS BEFORE THE : ON CLEARINGHOUSE RULE 04-110
DEPARTMENT OF REGULATION : (s. 227.19 (3), Stats.)
AND LICENSING :**

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS:

No new or revised forms are required by these rules.

III. FISCAL ESTIMATES:

2003 Wisconsin Act 150 charged the department to calculate initial credentialing costs to calculate initial fees for licensure as an athlete agent. The initial fee shall be \$312. The calculation of costs for initial credentialing and revenue needed, assuming 100 agents are initially credentialed, appears on the attached page.

This proposed rule will have no significant effect on the private sector.

IV. STATEMENT EXPLAINING NEED:

These proposed rules are as a result of 2003 Wisconsin Act 150, which enacted the Uniform Athlete Agents Act. In this proposed rule-making order the Department of Regulation and Licensing creates rules relating to the licensure of athlete agents. Chapters RL 150 to 154 establish requirements and standards for registration and the practice of registered athlete agents. The rules specify the registration requirements for permanent registration, renewal requirements, and prohibited conduct for athlete agents.

V. NOTICE OF PUBLIC HEARING:

A public hearing on this proposed rule-making order and the emergency rules was held on November 12, 2004. There were no appearances at the public hearing nor were any written comments received.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Comment 2.e. The rule proposes to "reserve" s. RL 152.02. This is not appropriate drafting form: the agency can choose not to have any provision numbered "RL 152.02," but it does not need to be "reserved." It is not clear why the agency is recommending a

specific initial certificate fee in s. RL 151.03, but not a renewal fee in ch. RL 152. The agency may wish to include its reasons in the rule analysis.

Response: Section RL 152.02 has been removed from the rules

Comment 5.a. The law is somewhat unclear in the definition of an "athletic director" and the rule does not provide any additional clarity. For example, it is not clear whether the references are to an intercollegiate or high school "athletic director." Since reporting requirements for both the athlete and the agent are central to the regulatory aspect of the rule, it would be helpful to clarify this part of the rule.

Response: The definition of "athletic director" is determined by statute. The department is reluctant to use the administrative rule process to modify the statutory definition which might result in unintended consequences, especially as the Rules Clearinghouse has not provided guidance how the current statutory definition is deficient.

Comment 5.b. Section RL 151.05 (1) requires the issuance of a temporary registration if certain specified conditions are met. However, the statutes, in s. 440.993, provides that the agency "may" issue a temporary certificate. In order to be consistent in language, the agency may wish to change the "shall" to "may" in s. 151.05 (1) (intro.). As an alternative, the agency may wish to provide a "catch-all" provision to allow denial for reasonable circumstances, similar to those contained in s. RL 151.06, relating to denials of regular certificates.

Response: The temporary certificate provisions are deleted from the permanent rules.

All of the remaining recommendations suggested in the Clearinghouse Report were accepted in whole.

VII. FINAL REGULATORY FLEXIBILITY ANALYSIS:

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

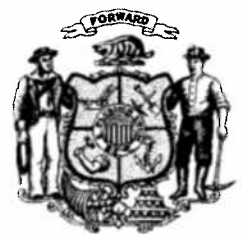
Initial Credentialing Cost Assumptions for Athlete Agents

	Hours	Hourly + fringe	Total Pers Svcs	Supplies
Changes to IT systems for new profession				
120 hours IT programmer time @ \$38 hour including	120	38	4,560	
80 hours programming of IVR system @ 38 hour	80	38	3,040	
Credentialing--develop forms and applications				
40 Credentialing program manger @ 31 hr including fringe	40	31	1,240	
40 hours PA 3 @ \$21 including fringe	40	21	840	
40 hours legal counsel @ \$55 including fringe	40	55	2,200	
Promulgate rules				
80 hours paralegal @ \$30 hour incl fringe	80	30	2,400	
80 hours legal counsel @ \$55 including fringe	80	55	4,400	
80 hours program manager @ \$31 per hour incl fringe	80	31	2,480	
50 hours budget analyst @ 53 per hour	50	53	2,650	
Board Services Support to Advisory Committee				
8 members travel for 5 meetings, travel per meeting	5	271		1355
meals for 8 members+ meals for 3 staff	5	99		495
80 hours Board Ser 'Bud Dir @ \$39	80	39	3,120	
Revenue needed to cover start up costs			26,930	1,850 28,000

	Total Revenue	Ops Appr	Gen. Fund
\$312 initial lic fee			
100 licensees	31,200	28,080	3,120



WISCONSIN STATE LEGISLATURE



STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF REGULATION
DEPARTMENT OF REGULATION : AND LICENSING ADOPTING RULES
AND LICENSING : (CLEARINGHOUSE RULE 04-110)

PROPOSED ORDER

An order of the Department of Regulation and Licensing to create chapters RL 150 to 154 relating to the licensure and regulation of athlete agents.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes interpreted:

Sections 440.05, 440.08 (2) (a) 14d., Stats., and Chapter 440, Subchapter XII.

Statutory authority:

Section 227.11 (2), Stats., and ss. 440.993, 440.9935 and 440.999, Stats., as created by 2003 Wisconsin Act 150.

Explanation of agency authority:

In this proposed rule-making order the Department of Regulation and Licensing creates rules relating to the licensure of athlete agents. These rules are as a result of 2003 Wisconsin Act 150 which enacted the Uniform Athlete Agents Act. Chapters RL 150 to 154 establish requirements and standards for registration and the practice of registered athlete agents. The rules specify the registration requirements for permanent registration, renewal requirements, and prohibited conduct for athlete agents.

Related statute or rule:

There are no related statutes or rules other than those listed above.

Plain language analysis:

SECTION 1 creates Chapter RL 150 which sets forth the statutory authority and the definitions for the proposed rules.

SECTION 2 creates Chapter RL 151 which sets forth the application process and requirements for an initial certificate of registration.

SECTION 3 creates Chapter RL 152 which sets forth the application process and requirements for renewal of a certificate of registration.

SECTION 4 creates Chapter RL 153 which outlines the standards of practice which apply to a credential holder.

SECTION 5 creates Chapter RL 154 which defines unprofessional conduct.

Summary of, and comparison with, existing or proposed federal regulation:

H.361, the Sports Agent Responsibility and Trust Act, regulates the conduct of sports agents and was signed by President Bush on September 24, 2004, becoming public law 108-304.

SECTION 1. SHORT TITLE.

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

SECTION 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.

SECTION 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.'

SECTION 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 (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.

SECTION 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.

SECTION 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 FEE – In 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.

SECTION 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.

SECTION 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.

Comparison with rules in adjacent states:

Michigan: None.

Illinois: None. [The Uniform Athlete Agents Act (UAAA), is pending. 2003 Wisconsin Act 150, is Wisconsin's enactment of the UAAA.]

Minnesota: Has adopted the Uniform Athlete Agents Act (UAAA), but has not promulgated rules.

Indiana : Indiana Administrative Code:

ARTICLE 4. ATHLETE AGENTS- Rule 1. Authority and Applicability **10 IAC 4-1-1 Authority**

Authority: IC 4-6-2-1.3

Affected: IC 25-5.2

Sec. 1. This article is adopted under the authority granted to the attorney general by the uniform athlete agent act (IC 25-5.2). (*Office of Attorney General for the State; 10 IAC 4-1-1; filed Feb 22, 2002, 2:52 p.m.: 25 IR 2208*)

10 IAC 4-1-2 Applicability

Authority: IC 4-6-2-1.3

Affected: IC 25-5.2

Sec. 2. The definitions in the uniform athlete agent act and in this rule apply throughout this article. (*Office of Attorney General for the State; 10 IAC 4-1-2; filed Feb 22, 2002, 2:52 p.m.: 25 IR 2208*)

Rule 3. Fees

10 IAC 4-3-1 Fee for registration as an athlete agent

Authority: IC 4-6-2-1.3

Affected: IC 25-1-8-2; IC 25-5.2-2-7

Sec. 1. The fee for a two (2) year application for registration or renewal of registration is seven hundred dollars (\$700). (*Office of Attorney General for the State; 10 IAC 4-3-1; filed Feb 22, 2002, 2:52 p.m.: 25 IR 2208*)

Rule 6. Agency Contract Notice Provision

10 IAC 4-6-1 Format for notice on agency contract

Authority: IC 4-6-2-1.3

Affected: IC 4-21.5-3-35; IC 25-5.2-2-8

Sec. 1. For the purposes of IC 25-5.2-2-8, the notice required in IC 25-5.2-2-8(c) shall be considered adequate if the notice is in 14-point boldface type in capital letters within two (2) inches of the signature of the student athlete on the same page as the signature of the student athlete. (*Office of Attorney General for the State; 10 IAC 4-6-1; filed Feb 22, 2002, 2:52 p.m.: 25 IR 2209*)

Iowa: [Not based on the Uniform Athlete Agents Act (UAAA)]

ATHLETE AGENT REGISTRATION (IAC 721 Chap 42)

721—42.1(9A,17A) Fees. The fee for the initial application for certificate of registration as an athlete agent is \$300. The fee for a renewal application for certificate of registration is \$150.

721—42.2(9A,17A) Surety bond. An athlete agent shall have on file with the secretary of state, before the issuance or renewal of a certificate of registration, a surety bond executed by a surety company authorized to do business in this state, in the sum of \$25,000. The bond shall be executed on the form prescribed by the secretary of state. The prescribed bond form may be obtained by writing to the Secretary of State, Hoover State Office Building, Des Moines, Iowa 50319, or by calling (515)242-5071.

721—42.3(9A,17A) Agent contract. 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. 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. Forms may be submitted to the secretary of state for approval by forwarding the forms to: Secretary of State, Athlete Agent Registration, Hoover State Office Building, Des Moines, Iowa 50319.

721—42.4(9A,17A) General information. Further information pertaining to the Registration of Athlete Agents Act and all application forms may be obtained by contacting the Secretary of State, Corporations Division, Hoover State Office Building, Des Moines, Iowa 50319, (515)242-5071 during regular office hours, 8 a.m. to 4:30 p.m.

Monday through Friday except legal holidays. These rules are intended to implement Iowa Code chapter 9A. [Filed emergency 7/8/88—published 7/27/88, effective 7/8/88]

Summary of factual data and analytical methodologies:

The department and advisory committee reviewed 2003 Wisconsin Act 150 which is based upon the Uniform Athlete Agents Act, as well as the implementation of rules of other states which have adopted the Uniform Athlete Agents Act. The intent of the department was to design rules which would allow for uniformity and consistency of credentialing and enforcement between Wisconsin, and other states which have adopted the Uniform Athlete Agents Act. Multijurisdictional uniformity and consistency is one of the primary purposes of the Uniform Athlete Agents Act.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:

2003 Wisconsin Act 150 charged the department to calculate initial credentialing costs to calculate initial fees for licensure as an athlete agent. The initial fee shall be \$312. The calculation of costs for initial credentialing and revenue needed, assuming 100 agents are initially credentialed, appears on the attached page.

Anticipated costs incurred by private sector:

The department has determined that this rule has no significant fiscal effect on the private sector.

Effect on small business:

These proposed rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

Agency contact person:

Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Administrative Rules, 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708-8935. Telephone: 608266-0394. E-mail: pamela.haack@drl.state.wi.us

Place where comments are to be submitted and deadline for submission:

Department of Regulation and Licensing, Office of Administrative Rules, 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708-8935. E-mail: pamela.haack@drl.state.wi.us. Comments must be received by November 22, 2004.

TEXT OF RULE

SECTION 1. Chapter RL 150 is created to read:

Chapter RL 150

AUTHORITY AND DEFINITIONS

RL 150.01 Authority. The rules in chs. RL 150 to 154 are adopted pursuant to ss. 227.11 (2), 440.993, 440.9935 and 440.999, Stats.

RL 150.02 Definitions. As used in chs. RL 150 to 154:

(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 enter into an agency contract.

(5) "Department" means the department of regulation and licensing.

(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) "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 under Subchapter XII of chapter 440, Stats.

(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.

SECTION 2. Chapter RL 151 is created to read:

Chapter RL 151

ATHLETE AGENT REGISTRATION

RL 151.01 Applications. An applicant for a certificate of registration shall file an application and pay the fee specified in s. RL 151.03. The application shall be in the name of an individual. Except as provided in s. RL 151.06, the department shall issue a certificate of registration to an applicant who complies with s. RL 151.02 or whose application has been accepted under s. RL 151.04 and if the applicant has paid the fee specified in s. RL 151.03.

RL 151.02 Application contents. An application for a certificate of registration shall include 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 5 years preceding the date of submission of the application.
- (4) A description of all of the following:

- (a) The applicant's formal training as an athlete agent.
 - (b) The applicant's practical experience as an athlete agent.
 - (c) The applicant's educational background relating to his or her activities as an athlete agent.
- (5) 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.
- (6) If the applicant's business is not a corporation, the names and addresses of the partners, members, officers, managers, associates, or profit sharers of the business.
- (7) If the applicant 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.
- (8) Whether the applicant or any person named pursuant to sub. (6) or (7) has been convicted of a crime in this or another state or has a criminal charge pending in this or another state and a description of each conviction or criminal charge.
- (9) Whether there has been any administrative or judicial determination that the applicant or any person named pursuant to sub. (6) or (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 sub. (6) or (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 person named pursuant to sub. (6) or (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 sub. (6) or (7), as an athlete agent in any state.
- (13) The signature or other authentication by the applicant under penalty of perjury.

RL 151.03 Initial credential fee. The initial credential fee is \$312.

RL 151.04 Waiver of application requirements. 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 s. RL 151.02. 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:

(1) The application to the other state was submitted in the other state within the 6 months 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.

(2) The application to the other state contains information substantially similar to or more comprehensive than that required in an application submitted in this state. As used in this chapter, "substantially similar" means the application to the other state contains the information required by s. RL 151.02 necessary for a decision to grant or deny a credential in this state pursuant to s. RL 151.06.

(3) The application to the other state was signed by the applicant under penalty of perjury.

RL 151.05 Denial of issuance of certificate of registration. (1) 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, Stats, been convicted of a felony in this state or a crime in another state 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 in violation of ch. RL 153 or 154.

(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.

(2) In making a determination under sub. (1), 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.

SECTION 3. Chapter RL 152 is created to read:

Chapter RL 152

ATHLETE AGENT CERTIFICATE OF REGISTRATION RENEWAL

RL 152.01 Certificate of registration renewal. A registrant who desires to renew a certificate of registration shall submit to the department an application form for renewal that is signed by the registrant under penalty of perjury and contains current information on all matters required in an original application form for registration under s. RL 152.02 and pay the fee specified in s. RL 151.02.

RL 152.02 Proration of renewal fee. For the first renewal after a certificate of registration is issued, the department shall prorate the renewal fee based on the length of time between issuance and renewal at the rate of 1/24 of the renewal fee for each completed month that the registration is held prior to the month of the date of renewal.

RL 152.03 Waiver of renewal application requirements. A registrant who has submitted an application form for renewal of registration or licensure in another state, in lieu of submitting an application form for renewal as required under s. RL 152.01, may file a copy of the application form for renewal and a valid certificate of registration or licensure from the other state. The department shall accept the application form for renewal from the other state as an application form for renewal in this state if the application form submitted to the other state satisfies all of the following:

(1) The application form was submitted in the other state within the 6 months preceding the filing in this state and the applicant certifies that the information contained in the application for renewal is current.

(2) The application form contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this state. As used herein, "substantially similar" means the application for renewal in the other state contains the information required by s. RL 150.02 (1) to (3) and (6) to (12).

(3) The application form was signed by the applicant under penalty of perjury.

RL 152.04 Refusal to renew a certificate of registration. The department may refuse to renew a certificate of registration for conduct violating ch. RL 153 or 154 or that would have justified denial of a certificate of registration under s. RL 151.05.

SECTION 4. Chapter RL 153 is created to read:

Chapter RL 153

STANDARDS OF PRACTICE

RL 153.01 Required form of contract. An agency contract shall be in a record, signed or otherwise authenticated by the parties. The athlete agent shall give a record of the signed or otherwise authenticated agency contract to the student athlete at the time of execution.

RL 153.02 Advising student athlete of duty to provide notice to educational institution. The athlete agent shall provide, in addition to the agency contract, written notice to the student athlete at the time of execution of the agency contract, that, 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 and the athlete agent 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.

RL 153.03 Agency contract contents. An agency contract must 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 that 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.

(7) 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 CONTACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.

RL 153.04 Athlete agent to provide 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, 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.

RL 153.05 Right to cancellation by student athlete not to be waived. An agency contract may not provide that a student athlete may waive the right to cancel the contract.

RL 153.06 Return of consideration for cancelled agency contract prohibited. An agency contract may not provide that if a student athlete cancels an agency contract, the student athlete is required to pay any consideration under the contract or to return any consideration received from the athlete agent made to induce the student athlete to enter into the contract.

RL 153.07 Records. An athlete agent shall retain all of the following records for a period of 5 years. Records are to be open to inspection by the department during normal business hours. Upon demand, an athlete agent shall provide a copy of a record that includes all of the following to the department:

(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.

RL 153.08 Change of address. A registrant shall notify the department of a change of address as required under s. 440.11, Stats.

RL 153.09 Prohibited conduct. (1) An athlete agent, with the intent to induce a student athlete to enter into an agency contract, shall 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 shall not intentionally do any of the following:

(a) Initiate contact with a student athlete unless registered as an athlete agent. As used herein, "initiate contact" includes all persons employed or contracted for any consideration paid by the athlete agent or the athlete agent's business or employer who either directly or indirectly, solicits, recruits or recommends student athletes on the applicant's behalf.

(b) Refuse or fail to retain or permit inspection of the records required to be retained by s. RL 153.07.

(c) Fail to register when required by s. 440.991, Stats.

(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.

RL 153.10 Reporting convictions. An athlete agent who has been convicted of a crime in this or another state shall send to the department within 30 days after the judgment of conviction a copy of the complaint or other information which describes the nature of the crime and the judgment of conviction.

RL 153.11 Reporting administrative or judicial determinations and sanctions. An athlete agent who has been the subject of an administrative, judicial or other governing body determination or sanction shall send to the department within 30 days after the determination or sanction becomes final, an official form of notice, judgment or other record from the administrative, judicial or other governing body forum for any of the following:

(1) A determination that the athlete agent has made a false, misleading, deceptive or fraudulent representation.

(2) Any instance in which the conduct of the athlete agent 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) Any sanction, suspension, or disciplinary action taken against the athlete agent arising out of occupational or professional conduct.

SECTION 5. Chapter RL 154 is created to read:

Chapter RL 154

UNPROFESSIONAL CONDUCT

RL 154.01 Unprofessional conduct. The following, or aiding or abetting the following, without limitation because of enumeration, constitutes unprofessional conduct:

(1) An administrative or judicial determination that the registrant has made a false, misleading, deceptive, or fraudulent representation.

(2) Any instance in which the conduct of the registrant has 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) Any sanction, suspension, or disciplinary action taken against the registrant arising out of occupational or professional conduct.

(4) Subject to ss. 111.321, 111.322 and 111.335, Stats., to have been convicted of a felony in this state or a crime in another state that if committed in this state, would be a felony.

(5) Making a materially false, misleading, deceptive, or fraudulent representation in the application or as an athlete agent.

(6) Engaging in conduct that would disqualify the applicant from serving in a fiduciary capacity.

(7) Engaging in conduct violating ch. RL 153.

(8) Having a registration or licensure as an athlete agent suspended, revoked or limited because of professional discipline in this state or any other state.

(9) Having a registration or licensure as an athlete agent denied or having a renewal of registration or licensure refused in any state.

(10) Having 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.

(11) Having engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty, or integrity.

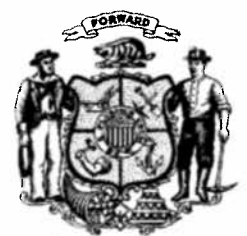
(END OF TEXT OF RULE)

These proposed rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2) (intro.), Stats.

Dated _____

Agency _____
Deputy Secretary Sandra M. Rowe
Department of Regulation and Licensing

Chs RL 150-154 CR04-110 (Athlete Agents) Draft to Leg 1-25-05





WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 04-110

AN ORDER to create chapters RL 150 to 154, relating to the licensure and regulation of athlete agents.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

10-01-2004 RECEIVED BY LEGISLATIVE COUNCIL.

10-29-2004 REPORT SENT TO AGENCY.

RNS:RW

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]
Comment Attached YES NO
2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]
Comment Attached YES NO
3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]
Comment Attached YES NO
4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]
Comment Attached YES NO
5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]
Comment Attached YES NO
6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]
Comment Attached YES NO
7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]
Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 04-110

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 2002.]

2. Form, Style and Placement in Administrative Code

a. The department should review the enclosed letter to agencies from the Rules Clearinghouse, dated April 13, 2004, that lists headings to be used in a rule analysis in order to comply with the statutes, as affected by 2003 Wisconsin Acts 118 and 145.

b. The title of ch. RL 150 should be revised to delete “, INTENT” since the chapter does not deal with intent.

c. In s. RL 151.02 (11), the “or” after “(7)” should be renumbered. This will conform the rule text with the statutory provision. Given the extensive reliance on statutory language in the rule, it is important to assure that the rule is in agreement with the statutes.

d. In s. 151.04 (2), “in this chapter” should replace “herein.”

e. The rule proposes to “reserve” s. RL 152.02. This is not appropriate drafting form: the agency can choose not to have any provision numbered “RL 152.02,” but it does not need to be “reserved.” It is not clear why the agency is recommending a specific initial certificate fee in s. RL 151.03, but not a renewal fee in ch. RL 152. The agency may wish to include its reasons in the rule analysis.

f. Several prohibitions in the rule use the term “shall not”; the appropriate term is “may not.” [See s. 1.01 (2), Manual.] For example, see ss. RL 153.05 and 153.06.

g. In s. RL 154.01 (intro.), “following” should replace “same.”

4. Adequacy of References to Relate Statutes, Rules and Forms

The department should carefully review the list of statutes authorizing promulgation in the analysis and in s. RL 150.01. While some of these statutes authorize rule promulgation, some do not and should not be listed. For examples of the latter type of statute, see ss. 440.991 and 440.9925. The entire list should be reviewed. Also, it appears that "440.915" should be "440.9915."

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The law is somewhat unclear in the definition of an "athletic director" and the rule does not provide any additional clarity. For example, it is not clear whether the references are to an intercollegiate or high school "athletic director." Since reporting requirements for both the athlete and the agent are central to the regulatory aspect of the rule, it would be helpful to clarify this part of the rule.

b. Section RL 151.05 (1) requires the issuance of a temporary registration if certain specified conditions are met. However, the statutes, in s. 440.993, provides that the agency "may" issue a temporary certificate. In order to be consistent in language, the agency may wish to change the "shall" to "may" in s. 151.05 (1) (intro.). As an alternative, the agency may wish to provide a "catch-all" provision to allow denial for reasonable circumstances, similar to those contained in s. RL 151.06, relating to denials of regular certificates.

c. In s. RL 153.02, mention could be made to the requirement on the agent to also provide notice that a contract has been executed.

d. In s. RL 154.01 (8), the rule refers to a registration or license that is "limited" in "this or any other state." The term "limited" is not used in 2003 Act 150, the basis for the rule, and may not be appropriate in this context, even though the term is used in ch. 440, Stats. For example, a limitation may be for a very narrow purpose that would not necessarily justify a finding of "unprofessional conduct."

e. The agency may wish to consider inclusion of an "initial applicability" section to clarify the intended application of the rule. [See, s. 1.02 (3m), Manual.]