



1999 SENATE BILL 386

February 16, 2000 - Introduced by Senators GROBSCHMIDT, ROESSLER, WELCH and ROSENZWEIG, cosponsored by Representatives WIECKERT, KREUSER, UNDERHEIM, KREIBICH, SUDER, OTT, HAHN, MEYERHOFER, ALBERS, GOETSCH, SYKORA, MUSSER, OLSEN, HUEBSCH, KELSO, PETTIS, PLOUFF, SERATTI, MILLER, VRAKAS, AINSWORTH and KAUFERT. Referred to Economic Development, Housing and Government Operations.

1 **AN ACT to create** 93.135 (1) (rp) and 100.179 of the statutes; **relating to:**
2 regulation of athletic agents, granting rule-making authority and providing a
3 penalty.

Analysis by the Legislative Reference Bureau

This bill regulates individuals who act as athletic agents and imposes requirements on contracts between athletic agents and student athletes.

The bill prohibits an individual from acting as an athletic agent unless he or she is registered with the department of agriculture, trade and consumer protection (DATCP). "Athletic agent" is defined as an individual who: 1) enters into an agent contract with a student athlete; or 2) contacts, recruits or solicits a student athlete to enter into an agent contract. An individual who acts on behalf of such an individual for the purpose of contacting, recruiting or soliciting a student athlete to enter into an agent contract is also included under the definition of "athletic agent". An "agent contract" is defined as an agreement under which a student athlete authorizes an athletic agent to negotiate or solicit a professional sports services contract or endorsement contract for the student athlete.

Except as provided in the bill, an individual may not contact a student athlete in this state unless the individual is registered as an athletic agent. "Contact" is defined as a communication by any means between an athletic agent and student athlete to induce or attempt to induce the student athlete to enter into an agent contract, professional sports services contract or endorsement contract. An individual who is not registered as an athletic agent may contact a student athlete

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only if the student athlete or a person acting on behalf of the student athlete initiates communication with the individual. In addition, no later than seven days after the contact, the individual must: 1) apply for registration as an athletic agent; and 2) notify the athletic director of the student athlete's educational institution or the student athlete's head coach about the contact.

The bill requires DATCP to register as an athletic agent an individual who submits specified information to DATCP, including information about the individual's representation of student athletes and the individual's business as an athletic agent. In addition, the individual may not have an arrest or conviction record, the circumstances of which substantially relate to acting as an athletic agent. Also, the individual must have malpractice liability insurance coverage of no less than \$100,000 per occurrence and \$100,000 for all occurrences in one year. The bill also allows DATCP to register an individual as an athletic agent if the individual is registered as an athletic agent in another jurisdiction that has registration requirements that are at least as stringent as the bill's requirements. Any individual who applies for registration must pay an application fee that is established in rules promulgated by DATCP. In addition, a registration must be renewed every two years upon payment of a renewal fee that is also established in rules and upon providing evidence that the individual has the malpractice liability insurance coverage described above.

The bill imposes certain requirements on individuals who are registered, including record-keeping requirements and a requirement to notify DATCP if a registered athletic agent is registered in good standing as an athletic agent with a professional players association. In addition, the bill requires a registered athletic agent to notify DATCP if his or her malpractice liability insurance is canceled. The bill requires DATCP to suspend a registration until such an individual notifies DATCP that he or she once again has the required malpractice liability insurance coverage. Also, the bill prohibits certain conduct by registered athletic agents, including engaging in certain conduct in order to induce a student athlete to enter into an agent contract, such as intentionally providing false or misleading information to the student athlete or providing the student athlete with anything of value. In addition, the bill prohibits a registered athletic agent from contacting a student athlete unless the athletic agent is registered as an athletic agent by a professional players association for the sport for which the athletic agent intends to negotiate a professional sport services contract for the student athlete.

The bill also imposes certain requirements on agent contracts. Under the bill, an agent contract must have specified terms and conditions, including a notice that if a student athlete enters into the contract, he or she will lose his or her eligibility to participate in his or her sport. An agent contract that does not satisfy the bill's requirements is voidable by a student athlete. In addition, a student athlete has the nonwaivable right to cancel an agent contract within seven days after entering into the contract. Also, before entering into an agent contract with a student athlete, an athletic agent must provide the student athlete with a copy of the athletic agent's registration application.

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The bill allows DATCP to take disciplinary action against an individual who violates the bill's requirements or who engages in certain prohibited conduct. Disciplinary action may include suspending or revoking the individual's registration as an athletic agent. In addition, a person who violates the bill's requirements may be fined no more than \$25,000 or imprisoned for no more than one year or both. Under certain circumstances, a student athlete or educational institution who is injured by an individual's violation of the bill's requirements may recover damages from the individual. Finally, the bill allows DATCP to require certain persons to provide DATCP with information that is relevant to DATCP's enforcement of the bill's requirements. In enforcing the bill's requirements, DATCP may issue subpoenas, administer oaths and conduct hearings.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 93.135 (1) (rp) of the statutes is created to read:

2 93.135 (1) (rp) A registration under s. 100.179.

3 **SECTION 2.** 100.179 of the statutes is created to read:

4 **100.179 Athletic agents. (1) DEFINITIONS.** In this section:

5 (a) "Agent contract" means an agreement under which a student athlete
6 authorizes an athletic agent to negotiate or solicit on behalf of the student athlete
7 a professional sports services contract or endorsement contract.

8 (b) "Athletic agent" means an individual who enters into an agent contract with
9 a student athlete, who contacts, recruits or solicits a student athlete to enter into an
10 agent contract, professional sports services contract or endorsement contract, or who
11 acts on behalf of such an individual for the purpose of contacting, recruiting or
12 soliciting a student athlete to enter into such a contract.

13 (c) "Athletic director" means the individual responsible for coordinating and
14 administering the overall athletic program for an educational institution.

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1 (d) “Compensation” means direct or indirect payment of anything of value,
2 including the expectation of such payment whether or not actually received.

3 (e) “Contact” means a communication by any means between an athletic agent
4 and student athlete to induce or attempt to induce the student athlete to enter into
5 an agent contract, professional sports services contract or endorsement contract.

6 (f) “Educational institution” means a public or private junior or senior high
7 school or postsecondary school that a student athlete attends, has last attended or
8 to which the student athlete has expressed written intention to attend.

9 (g) “Endorsement contract” means any contract or agreement pursuant to
10 which an individual is employed or receives compensation for any value or utility
11 that the individual may have due to publicity, reputation, fame or following because
12 of athletic ability or performance.

13 (h) “Jurisdiction” means a state or territory of the United States or another
14 country.

15 (i) “Professional sports services contract” means an agreement pursuant to
16 which a student athlete is employed or agrees to render services as a player on a
17 professional sports team or organization or as a professional athlete.

18 (im) “Reciprocal registration” means a license, registration or certificate issued
19 by another jurisdiction that allows an individual to act as an athletic agent in that
20 jurisdiction.

21 (is) “Reciprocal registration renewal” means the renewal of a reciprocal
22 registration by another jurisdiction.

23 (j) “Registrant” means an individual who is registered under this section.

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1 (k) "Student athlete" means an individual who engages in, is eligible to engage
2 in or may be eligible in the future to engage in any intercollegiate sporting event,
3 contest, exhibition or program.

4 **(2) REGISTRATION REQUIRED.** (a) Except as provided in par. (b), no individual
5 may act as an athletic agent, or contact a student athlete in this state, unless the
6 individual is registered under sub. (3).

7 (b) An individual who is not registered under sub. (3) may contact a student
8 athlete in this state if each of the following is satisfied:

9 1. The student athlete or a person acting on behalf of the student athlete has
10 initiated communication with the individual.

11 2. No later than 7 days after the contact, the individual submits an application
12 to the department for registration under sub. (3) and notifies the athletic director of
13 the educational institution or the student athlete's head coach about the contact.

14 **(3) REGISTRATION OF ATHLETIC AGENTS.** (a) Except as provided in sub. (10) (b),
15 the department shall register an individual as an athletic agent if the individual does
16 each of the following:

17 1. Submits an application to the department on a form provided by the
18 department.

19 2. Pays the initial registration fee established in rules promulgated under par.
20 (e).

21 3. Submits evidence satisfactory to the department that he or she has in effect
22 the malpractice liability insurance coverage specified in sub. (4) (a).

23 4. Subject to ss. 111.321, 111.322 and 111.335, submits evidence satisfactory to
24 the department that he or she does not have an arrest or conviction record.

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1 (b) An application under par. (a) shall require the applicant to provide each of
2 the following:

3 1. The name of the applicant and the address of his or her principal place of
4 business.

5 2. The name of the applicant's firm or employer.

6 3. The business or occupation in which the applicant has been engaged during
7 the 5-year period immediately preceding the date of the application.

8 4. A description of the applicant's formal training, practical experience and
9 educational background that relates to the applicant's activities as an athletic agent.

10 5. The names and addresses of 3 professional references.

11 6. The names and addresses of each individual represented by the applicant
12 as an athletic agent during the 5-year period immediately preceding the date of the
13 application.

14 7. The names and addresses of each person that has a financial interest in the
15 operation of the applicant's business as an athletic agent, including partners,
16 associates or profit-sharers, but not including salaried employees.

17 8. A description of each crime for which the applicant has been convicted.

18 9. A description of any administrative or judicial determination that the
19 applicant has made a false, misleading, deceptive, untrue or fraudulent
20 representation as an athletic agent or in any document related to the business of an
21 athletic agent.

22 10. A description of any sanction, suspension or declaration of ineligibility to
23 participate in an interscholastic or intercollegiate athletic event that has been
24 imposed on an educational institution or student athlete in any proceeding arising
25 from or related to the acts or omissions of the applicant.

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1 11. A description of any proceeding involving allegations of misconduct or
2 professional disciplinary charges against the applicant related to his or her acts or
3 omissions as an athletic agent and a description of the outcome of each such
4 proceeding.

5 12. The evidence specified in sub. (8) (a).

6 13. Any other information required by the department.

7 (c) Upon application on a form provided by the department and payment of the
8 initial registration fee established in rules promulgated under par. (e), the
9 department may register an individual as an athletic agent if the individual has been
10 issued a reciprocal registration by another jurisdiction that has licensure,
11 registration or certification requirements that the department determines are at
12 least as stringent as the registration requirements of this section.

13 (d) A registration granted under par. (a) or (c) expires on January 1 of each
14 odd-numbered year, unless the registration is renewed under this paragraph. The
15 department may not renew a registration unless the applicant for renewal submits
16 an application to the department on a form provided by the department and includes
17 with the application each of the following:

18 1. The registration renewal fee established in rules promulgated under par. (e).

19 2. Evidence satisfactory to the department that the applicant has in effect the
20 malpractice liability insurance coverage specified in sub. (4) (a).

21 (dm) Notwithstanding the requirement under par. (c) or (d) to submit an
22 application on a form provided the department, an applicant under par. (c) or (d) who
23 has been issued a reciprocal registration or a reciprocal registration renewal may
24 submit to the department a copy of the application for reciprocal registration or
25 reciprocal registration renewal. The department shall accept the appropriate copy

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1 submitted under this paragraph in lieu of an initial or renewal application form that
2 is provided by the department if each of the following apply:

3 1. The applicant certifies that the information on the copy is current.

4 2. The department determines that the information required by the other
5 jurisdiction is substantially equivalent to the information required in the initial or
6 renewal application form provided by the department.

7 (e) The department shall promulgate rules establishing the amount of an
8 initial registration fee required to be paid under pars. (a) 2. and (c) and the amount
9 of a registration renewal fee required to be paid under par. (d). The amount of the
10 fees shall reflect the approximate administrative and enforcement costs of the
11 department that are attributable to the registration of athletic agents under this
12 section. The rules shall require an applicant who has been issued a reciprocal
13 registration or reciprocal registration renewal to pay an initial registration fee or
14 registration renewal fee that is lower than the initial registration fee or registration
15 renewal fee required for an applicant who has not been issued a reciprocal
16 registration or reciprocal registration renewal if the department determines that
17 administrative and enforcement costs that are attributable to applicants who have
18 been issued a reciprocal registration or reciprocal registration renewal are lower
19 than the administrative enforcement costs that are attributable to applicants who
20 have not been issued a reciprocal registration or reciprocal registration renewal.

21 (4) MALPRACTICE LIABILITY INSURANCE. (a) Each individual registered as an
22 athletic agent under this section shall have in effect malpractice liability insurance
23 coverage in an amount that is not less than \$100,000 per occurrence and \$100,000
24 for all occurrences in one year.

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1 (b) No later than 30 days after a registrant receives from an insurer notice of
2 cancellation of the malpractice liability insurance coverage specified in par. (a), the
3 the registrant shall do one of the following:

4 1. Provide the department with evidence that he or she has in effect the
5 malpractice liability insurance coverage specified in par. (a).

6 2. Notify the department that he or she does not have in effect the malpractice
7 liability insurance coverage specified in par. (a).

8 (c) The department shall suspend the registration of an individual who makes
9 a notification under par. (b) 2. and shall reinstate the registration upon receiving
10 notice that the individual has in effect the malpractice liability insurance coverage
11 specified in par. (a).

12 **(5) AGENT CONTRACTS.** (a) An agent contract shall be in writing, signed by the
13 student athlete and, if the student athlete is under the age of 18 years, signed by the
14 student athlete's parent or guardian.

15 (b) An agent contract shall include each of the following:

16 1. A recitation of the compensation that the athletic agent will receive from the
17 student athlete.

18 2. A description of any compensation that the athletic agent will receive from
19 a source other than the student athlete for providing services under the agent
20 contract.

21 3. The name of any person who will share or benefit from the compensation
22 received from the student athlete.

23 4. A description of any expenses for which the student athlete agrees to
24 reimburse the athletic agent.

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1 5. A description of the professional services to be provided to the student
2 athlete.

3 6. The duration of the contract.

4 7. The following statement, in boldface type and capital letters, in close
5 proximity to the signature of the student athlete: **WARNING TO STUDENT**
6 **ATHLETE: IF YOU SIGN THIS CONTRACT YOU WILL LOSE YOUR**
7 **ELIGIBILITY TO PARTICIPATE IN YOUR SPORT. TALK TO YOUR HEAD**
8 **COACH BEFORE YOU SIGN THIS CONTRACT. YOU AND YOUR ATHLETIC**
9 **AGENT BOTH ARE REQUIRED TO NOTIFY YOUR ATHLETIC DIRECTOR OR**
10 **HEAD COACH IF YOU SIGN THIS CONTRACT SUCH A NOTIFICATION MUST**
11 **BE MADE EITHER WITHIN 72 HOURS AFTER YOU BOTH SIGN THIS**
12 **CONTRACT OR BEFORE YOUR PARTICIPATION IN YOUR NEXT ATHLETIC**
13 **EVENT, WHICHEVER OCCURS FIRST. IF YOU SIGN THIS CONTRACT, YOU**
14 **MAY CANCEL THE CONTRACT WITHIN 7 DAYS OF SIGNING IT.**
15 **CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR**
16 **ELIGIBILITY.**

17 (c) An agent contract that does not satisfy the requirements of this subsection
18 is voidable by the student athlete.

19 (d) A student athlete may cancel an agent contract by providing written notice
20 to the athletic agent of the cancellation within 7 days after the date on which the
21 agent contract is signed by the student athlete. A student athlete may not waive the
22 right to cancel an agent contract that is provided under this paragraph.

23 (e) If a student athlete cancels an agent contract under par. (d), the student
24 athlete is not obligated to pay any compensation to the athletic agent. A student

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1 athlete who cancels an agent contract under par. (d) shall return to the athletic agent
2 anything of value that was provided by the athletic agent to the student athlete.

3 **(6) NOTICE TO EDUCATIONAL INSTITUTION.** (a) In this subsection, “educational
4 institution” means an educational institution at which a student athlete is enrolled
5 or an educational institution that an athletic agent has reasonable grounds to believe
6 that a student athlete intends to enroll in the future.

7 (b) Within 72 hours after entering into an agent contract or before the student
8 athlete’s participation in the next athletic event, whichever occurs first, the athletic
9 agent shall notify the student athlete’s head coach or athletic director of the student
10 athlete’s educational institution.

11 (c) Within 72 hours after entering into an agent contract or before the student
12 athlete’s participation in the next athletic event, whichever occurs first, the student
13 athlete shall provide written notice to the student athlete’s head coach or athletic
14 director of the student athlete’s educational institution that the student athlete has
15 entered into an agent contract.

16 (d) The department may promulgate rules establishing requirements and
17 procedures for the notice required under this subsection.

18 **(7) PROHIBITIONS.** (a) An athletic agent may not do any of the following in order
19 to induce a student athlete to enter into an agent contract:

20 1. Intentionally provide any false or misleading information or intentionally
21 make any false promise or representation.

22 2. Provide anything of value or benefit to a student athlete, other than services
23 under the agent contract.

24 3. Provide anything of value or benefit to any individual other than the student
25 athlete.

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1 (b) An athletic agent may not do any of the following:

2 1. Postdate an agent contract, professional sports services contract or
3 endorsement contract.

4 2. Make or cause to be made any false, fraudulent or misleading statement,
5 representation, notice or advertisement relating to the business of the athletic agent.

6 3. Do business as an athletic agent without complying with the requirements
7 of this section.

8 4. Except as provided in sub. (2) (b), contact a student athlete before being
9 registered under this section.

10 5. Contact a student athlete before notifying the student athlete's head coach
11 or the athletic director of the student athlete's educational institution, as defined in
12 sub. (6) (a).

13 6. Enter into an agent contract, professional sports services contract or
14 endorsement contract with a student athlete unless the athletic agent has provided
15 the student athlete with a copy of the contract and the application submitted to the
16 department under sub. (3) (a) 1.

17 **(8) PROFESSIONAL PLAYERS ASSOCIATION REGISTRATION.** (a) An individual who
18 applies for registration under this section as an athletic agent and who is registered
19 as an athletic agent with a professional players association for a sport for which the
20 individual represents or intends to represent a student athlete shall provide on the
21 application for registration under this section evidence satisfactory to the
22 department that the registration with the professional players association is in good
23 standing.

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1 (b) An athletic agent shall notify the department if he or she is registered in
2 good standing as an athletic agent by a professional players association in addition
3 to the professional players association that is identified under par. (a).

4 (c) An athletic agent may not contact a student athlete unless the athletic agent
5 is registered as an athletic agent by a professional players association for the sport
6 for which the athletic agent intends to negotiate a professional sport services
7 contract for the student athlete.

8 **(9) RECORD KEEPING REQUIREMENTS.** (a) An athletic agent shall maintain each
9 of the following records for a period of 5 years:

10 1. The name and address of each student athlete represented by the athletic
11 agent.

12 2. The amount of any compensation received from each student athlete
13 represented by the athletic agent.

14 3. Any agent contract entered into between the athletic agent and a student
15 athlete.

16 4. A record of any expenses paid or anything of value provided by the athletic
17 agent in the recruitment or attempted recruitment of a student athlete.

18 (b) An athletic agent shall permit the department to inspect the records
19 specified in par. (a) during normal business hours.

20 **(10) DISCIPLINARY PROCEEDINGS AND ACTIONS.** (a) The department may conduct
21 investigations and hearings to determine whether a violation of this section or any
22 rule promulgated under this section has occurred.

23 (b) The department may reprimand a registrant, or may deny, limit, suspend
24 or revoke a registration, if an applicant or registrant has done any of the following:

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1 1. Made a material misstatement in an application for a registration or for
2 renewal of a registration.

3 2. Knowingly made a false, misleading, deceptive, untrue or fraudulent
4 representation as an athletic agent.

5 3. Engaged in acts that would render the applicant or registrant unfit to serve
6 in a fiduciary capacity.

7 4. Been the subject of a proceeding or investigation by a professional player's
8 association that has resulted in the professional players association imposing a
9 disciplinary sanction against the applicant or registrant.

10 5. Had a reciprocal registration suspended, revoked or denied in another
11 jurisdiction.

12 6. Subject to ss. 111.321, 111.322 and 111.335, been convicted of an offense the
13 circumstances of which substantially relate to the business of an athletic agent.

14 7. Engaged in any conduct that renders a student athlete or educational
15 institution ineligible to participate in a sport under the rules of a national association
16 or amateur organization that governs the sport.

17 8. Violated this section or any rule promulgated under this section.

18 (c) In determining whether to reprimand a registrant or deny, limit, suspend
19 or revoke a registration under par. (b), the department shall consider whether the
20 registrant or applicant has provided clear and convincing evidence that the
21 registrant or applicant is fit to serve as an athletic agent notwithstanding the action
22 specified in par. (b) that the registrant or applicant has committed. The department
23 shall also consider each of the following:

24 1. The timing and nature of the action that the registrant or applicant
25 committed and the context in which it occurred.

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1 2. Any activities of the registrant or applicant subsequent to the action that the
2 registrant or applicant committed that demonstrate that the registrant or applicant
3 is not likely to commit the action again.

4 **(11) PENALTY; CIVIL REMEDY.** (a) A person who violates this section or any rule
5 promulgated under this section may be fined not more than \$25,000 or imprisoned
6 for not more than one year or both.

7 (b) A student athlete injured by a violation of this section or any rule
8 promulgated under this section may bring a civil action to recover damages together
9 with costs, disbursements and, notwithstanding s. 814.04 (1), reasonable attorney
10 fees.

11 (c) An educational institution may recover damages together with costs,
12 disbursements and, notwithstanding s. 814.04 (1), reasonable attorney fees from an
13 athletic agent if any of the following occurs because of the activities of the athletic
14 agent:

15 1. The educational institution is penalized, disqualified or suspended from
16 participation in athletics by a national association for the promotion and regulation
17 of athletics, by an athletic conference or by self-imposed disciplinary action to
18 mitigate sanctions.

19 2. A student athlete who attends or has expressed a written intention to attend
20 the educational institution is declared ineligible to participate in athletics at the
21 educational institution.

22 3. The educational institution is injured by a violation of this section or any rule
23 promulgated under this section.

24 **(12) INVESTIGATIONS AND ENFORCEMENT.** (a) Whenever the department has
25 reason to believe that a person is in possession, custody or control of any information

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1 or documentary material relevant to the enforcement of this section it may require
2 that person to submit a statement or report, under oath or otherwise, as to the facts
3 and circumstances concerning any activity that may be relevant to the enforcement
4 of this section; examine under oath that person with respect to the activity; and
5 execute in writing and cause to be served upon such person a civil investigative
6 demand requiring the person to produce any relevant documentary material for
7 inspection and copying.

8 (b) The department, in exercising powers under this subsection, may issue
9 subpoenas, administer oaths and conduct hearings to aid in any investigation.

10 (c) Service of any notice by the department requiring a person to file a
11 statement or report, or service of a subpoena upon a person, or service of a civil
12 investigative demand shall be made in compliance with the rules of civil procedure
13 of this state.

14 (d) If a person fails to file any statement or report, or fails to comply with any
15 civil investigative demand, or fails to obey any subpoena issued by the department,
16 such person may be coerced as provided in s. 885.12, except that no person shall be
17 required to furnish any testimony or evidence under this subsection that might tend
18 to incriminate the person.

19 **(13) REGISTRY OF ATHLETIC AGENTS.** The department shall establish and update
20 on at least a bimonthly basis a registry of persons who are registered as athletic
21 agents under this section. The department shall make the registry available for
22 public inspection and copying and in any other manner that, as determined by the
23 department, facilitates public access to the registry.

SECTION 3. Nonstatutory provisions.

