

DRAFT
FOR DISCUSSION ONLY

UNIFORM ATHLETE AGENTS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

**MEETING IN ITS ONE-HUNDRED-AND-EIGHTH YEAR
DENVER, COLORADO**

JULY 23 - 30, 1999

UNIFORM ATHLETE AGENTS ACT

WITH PREFATORY NOTE AND REPORTER'S NOTES

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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DRAFTING COMMITTEE ON UNIFORM ATHLETE AGENTS ACT

RICHARD C. **HITE**, Suite 600, 200 W. **Douglas Avenue**, Wichita, KS **67202**, *Chair*
 JERRY L. **BASSETT**, **Legislative Reference Service**, 613 **Alabama State Howe**, 11 S. **Union Street**,
Montgomery, AL 36130
 TERESA ANN **BECK**, **House Legislative Services Office**, P.O. Box 1018, **Jackson**, MS 39215
 ROBERT N. **DAVIS**, **University of Mississippi**, School of Law, **University**, MS 38677, *National
 Conference Reporter*
 CHARLES W. **EHRHARDT**, **Florida State University**, College of Law, **425 W. Jefferson Street**,
Tallahassee, FL 32306
 THOMAS L. **JONES**, **University of Alabama School of Law**, **University Station**, P.O. Box 865557,
Tuscaloosa, AL 35486-0050
 JOSHUA M. **MORSE, III**, **Florida State University**, College of Law, **Tallahassee**, FL 32306
 HARVEY S. **PERLMAN**, **University of Nebraska**, College of Law, P.O. Box 830902, **Lincoln**,
 NE 68583
 FREDERICK P. **STAMP, JR.**, U.S. **District Court**, P.O. Box 791, **Wheeling**, WV 26003
 HARRY M. **WALSH**, 456 **Summit Avenue**, # 206, **St. Paul**, MN 55102
 HARRY **WIGGINS**, **Missouri Senate**, Room 423, **State Capitol**, **Jefferson City**, MO 65101

EX OFFICIO

GENE N. **LEBRUN**, P.O. Box 8250, **9th Floor**, 909 **St. Joseph Street**, **Rapid City**, SD 57709, *President*
 SCOTT N. **HEIDPRIEM**, 431 N. **Phillips Avenue**, Suite 400, **Sioux Falls**, SD 57104, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISORS

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 OK 73019, *Executive Director*
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Copies of this Act may be obtained from:
**NATIONAL CONFERENCE OF COMMISSIONERS
 ON UNIFORM STATE LAWS**
 211 B. **Ontario Street**, Suite 1300
Chicago, Illinois 60611
 312/915-0195

UNIFORM ATHLETE AGENTS ACT

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UNIFORM ATHLETE AGENTS ACT

PREFATORY NOTE

A high percentage of **athlete agents provide valuable services** which are **greatly needed** by **student-athletes** who are qualified to **seek professional sports services contracts**. The services usually include **negotiations with professional sports organizations and securing endorsement contracts**. The services may also include financial **and investment management**, tax planning, legal counseling and a **variety of other career management services**.

Unfortunately, there are other athlete **agents**, or would be **agents**, who are motivated solely by a **desire** to obtain a **"cut"** of a **student-athlete's future income**. These unscrupulous individuals are willing to use any means to obtain an agency contract with any student-athlete who has any possibility of a professional career. The multi-million dollar contracts now being of to many student-athletes have provided additional impetus to this minority.

The damage done by improper and illegal **enticements** to student-athletes is far greater than the casual observer might believe. The student-athlete who enters into an **agency contract loses** any remaining **eligibility** and may **diminish his or her value** in the **professional sports market**. Additionally, in some States, the student-athlete may be subject to **civil and criminal sanctions**. The educational institution (usually a college or university) attended by the **student-athlete may be** subject to **severe financial penalties**. Penalties can result either from **loss of eligibility to participation in post-season events** or from the effect of programs weakened by **sanctions on ticket sales**. Perhaps even more damaging is the impact of a **"scandal"** on the integrity and **credibility of educational institutions and on intercollegiate sports in general**.

since 1995 at least **27 States** have enacted **statutes regulating athlete agents**. Those **statutes are** not uniform and do not provide for **reciprocal enforcement**. **Several major universities and the NCAA** have asked the **Conference** to draft this **Uniform Act** and have pledged their **support in obtaining enactments**. The **NCAA** agreed to **finance the drafting project**. Although treading on regulatory ground the **Conference** has usually avoided the **Conference**, with some reluctance, agreed to draft a **Uniform Act**.

1 **UNIFORM ATHLETE AGENTS ACT**

2 SECTION 101. SHORT **TITLE**. This [Act] may **be cited as the Uniform**
3 **Athlete Agents Act**

4 **Reporter's Notes**

5 **The use of term "athlete agent" reflects the current usage in many States**
6 **that have existing law on the same subject; e.g. Alabama [Section 8-26-1, et. seq.,**
7 **Code of Alabama 1975]; Colorado [Section 23-16-101, et. seq., Colorado Revised**
8 **Statutes Annotated]; Iowa [section 9A.1 et. seq., Iowa Code Annotated]; Louisiana**
9 **[Louisiana Statutes Annotated, 4:424, Section 421 et. seq.]; Mississippi [Section**
10 **73-41-1, et. seq., Mississippi Code]; Missouri [Section 436.200, et. seq., Missouri**
11 **Code]; North Carolina [Chapter 78C, North Carolina Code]; Oklahoma [Oklahoma**
12 **Code Annotated, Section 70-821.1, et. seq.]; South Carolina [South Carolina Code**
13 **Annotated, Section 59-102-10, et. seq.]; Texas [Title 132, Chapter 12, Article 8871,**
14 **Vernon's Texas Code Annotated]; and Washington [Section 18.175.010. et. seq.,**
15 **Washington Business and Professions Code].**

16 **SECTION 102. DEFINITIONS.** In **this** [Act]:

17 (1) **"Athlete agent" means an individual who enters into an agency contract**
18 **with a student-athlete or who, directly or indirectly, contacts, recruits, or solicits a**
19 **student-athlete to enter into an agency contract, a professional sports-services**
20 **contract, or an endorsement contract. The term does not include an individual**
21 **acting solely on behalf of a professional sports team or organization or an**
22 **individual acting solely for his or her spouse, child, grandchild, or ward.**

23 (2) **"Agency contract" means an agreement in which a student-athlete**
24 **authorizes a person to negotiate or solicit on behalf of the student-athlete a**
25 **professional sports-services contract or an endorsement contract.**

26 (3) **"Athletic director" means an individual responsible for administering**
27 **the overall athletic program of an educational institution.**

1 **(4) "Contact" means a communication, director indirect, between an**
2 **athlete agent and a student-athlete, to induce or attempt to induce a student-athlete**
3 **to enter into an agency contract, professional sports-services contract, or**
4 **endorsement contract.**

5 **(5) "Endorsement contract" means a contract under which a student-athlete**
6 **is employed or receives remuneration to utilize on behalf of the other contracting**
7 **party any value or utility that the student-athlete may have because of publicity,**
8 **reputation, following, or fame obtained because of athletic ability or performance.**

9 **(6) "Person" means an individual, corporation, business trust, estate, trust,**
10 **partnership, limited liability company, association, joint venture, government;**
11 **governmental subdivision, agency, or instrumentality; public corporation, or any**
12 **other legal or commercial entity.**

13 **(7) "Professional sports-services contract" means a contract under which a**
14 **student-athlete is employed or agrees to render services as a player on a**
15 **professional sports team or organization or as a professional athlete.**

16 **(8) "Registration" means registration as an athlete agent pursuant to this**
17 **[Act].**

18 **(9) "State" means a State of the United States, the District of Columbia,**
19 **Puerto Rico, the United States Virgin Islands, or any territory or insular possession**
20 **subject to the jurisdiction of the United States.**

21 **(10) "Student-athlete" means an individual who engages in, is eligible to**
22 **engage in, or may be eligible in the future to engage in, any intercollegiate sport.**

1 **An individual is not a student-athlete if the individual is ineligible to**
2 **participate in a particular sport unless:**

3 **(A) the individual's eligibility to participate in that particular sport is**
4 **restored; or**

5 **(B) the individual is eligible to engage in, or may be eligible in the**
6 **future to engage in, a different intercollegiate sport, in which case the individual is**
7 **a student-athlete for purposes of the different sport.**

8

Reporter's Notes

9 **In paragraph (l), the definition of "athlete agent" is limited to individuals,**
10 **i.e., a corporation that employs athlete agents would not be required to register as**
11 **an athlete agent but the individuals would. The term includes not only an**
12 **individual who enters into an agency contract with a student-athlete but ah the**
13 **"runners" agents use to recruit the student-athlete to sign with a particular agent.**
14 **The Drafting Committee considered and decided against exclusions for individuals**
15 **otherwise licensed by the State, such as attorneys.**

16 **In paragraph (10), "student-athlete" is defined to allow the Act to apply to a**
17 **two-sport athlete who has signed a professional contract in one sport but has**
18 **eligibility remaining in another sport. It is also defined to include individuals who**
19 **are not yet in college or even eligible for college in an attempt to prevent agents**
20 **from inducing high school students to jeopardize their college eligibility.**

21 **SECTION 103. ADMINISTRATION.** The [Secretary of State] shall
22 **administer this[Act].**

23 **SECTION 104. ATHLETE AGENTS: REGISTRATION REQUIRED.**

24 **(a) Except as otherwise provided in subsection (b), an individual may not**
25 **act as an athlete agent in this State, or contact a student-athlete who is attending or**

1 has **expressed a written** intention to attend an educational **institution** in thin State,
2 before **registering** with the **[Secretary of State]**.

3 **(b) An individual who is not registered as an athlete agent in this State may**
4 **contact a student-athlete if:**

5 **(1) the student-athlete or an individual on behalf of the student-athlete**
6 **initiate⁸ communication with the individual; and**

7 **(2) within seven days after the contact made by the individual in**
8 **response to the student-athlete's initiation of communication, the individual files an**
9 **application to register as an athlete agent in this State.**

10 **(c) An agency contract resulting from an act in violation Of this section is**
11 **void and no individual owes any money or other consideration under the contract.**
12 **The athlete agent shall return any money or other consideration received under the**
13 **contract.**

14 **Reporter's Notes**

15 **In subsection (b), the Committee intended to allow an individual to respond**
16 **to inquiries before being required to register as an athlete agent.**

17 **In subsection (c), the intention of the Drafting Committee waa to discourage**
1 **8 inappropriate contacts by making any resulting agency contract void and allowing a**
19 **student-athlete to keep my inducement given to him or her to enter into the void**
20 **contract.**

21 **SECTION 105. REGISTRATION AS ATHLETE AGENT.**

22 **(a) An applicant for registration as an athlete agent shall submit a written**
23 **application for registration to the [Secretary of State] on a form prescribed by the**

1 **[Secretary of State]. Except as otherwise provided in subsection (b), the application**
2 **must state or contain:**

3 (1) **the name of the applicant and the address of the applicant's principal**
4 **place of business;**

5 (2) **the name of the applicant's firm or employer;**

6 (3) **any business or occupation engaged in by the applicant for the five**
7 **years next preceding the date of submission of the application;**

8 (4) **a description of the applicant's:**

9 (A) **formal training;**

10 (B) **practical experience; and**

11 (C) **educational background relating to the applicant's activities as**
12 **an athlete agent;**

13 (5) **the names and addresses of three individuals who can provide**
14 **references;**

15 (6) **the name, sport, and last known team of all individuals represented**
16 **by the applicant as an athlete agent during the five years next preceding the date of**
17 **submission of the application;**

18 (7) **the names and addresses of all persons who have a financial interest**
19 **in the operation of the business of the applicant as an athlete agent including**
20 **partners, associates, or profit-sharers, but not including employees on fixed salaries;**

21 (8) **any crime, other than a minor traffic offense, of which the applicant**
22 **has been convicted;**

1 **(9) any administrative or judicial determination that the applicant has**
 2 **made a false, misleading, deceptive, or fraudulent representation as an athlete**
 3 **agent;**

4 **(10) any instance in which the actions of the applicant resulted in the**
 5 **imposition of a sanction, suspension, Or declaration of ineligibility to participate in**
 6 **an interscholastic or intercollegiate athletic event on a student-athlete or educational**
 7 **institution;**

8 **(11) any sanction or disciplinary action taken against the applicant**
 9 **arising out of misconduct in his or her occupation or profession;**

10 **(12) any denial of an application or suspension, revocation, or refusal to**
 11 **renew the applicant's registration as an athlete agent in any State; and**

12 **(13) the applicant's signature under penalty of perjury.**

13 **(b) An individual who has filed an application to be an athlete agent in**
 14 **another State, in lieu of filing an application in this State, may file a copy of the**
 15 **application from the other State.**

16 **The [Secretary of State] shall accept the application from the other State as**
 17 **an application for registration in this State if the application from the other State:**

18 **(1) was filed in the other State within the next preceding six months or**
 19 **the applicant certifies the information contained in the application is current; and**

20 **(2) contains information substantially similar to or more detailed than**
 21 **that required in an application filed in this State.**


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Reporter's Notes

Most of the **requirements** in subsection (a) **are fairly** common to registration acts. The Committee felt that paragraph **(7)**, and **paragraphs** (9) to **(12)**, inclusive, were critical to evaluating the **qualifications** of an athlete **agent**.

With regard to subsection **(b)**, the athlete agent industry felt, and the Committee **agreed**, that it was important to allow a single registration in those States enacting the Act.

SECTION 106. ISSUANCE, DENIAL, SUSPENSION, REVOCATION OF, OR REFUSAL, TO RENEW CERTIFICATE OF REGISTRATION.

 (a) The [Secretary of State] shall issue a certificate of **registration** to an individual who has complied with Section **105(b) and** submits satisfactory proof that the individual is **licensed** or registered in the State in which the application **submitted pursuant** to Section **105(b)** was filed **and** the [Secretary of State] determines the **requirements** for **licensure** or **registration** in the other State are substantially similar to or more **stringent** than those of this State.

(b) Except as otherwise provided in subsection (c), the **[Secretary of State]** shall issue a certificate of registration to **an individual** who complies with Section **105(a)**.

(c) **The** [Secretary of State] may **refuse** to issue a certificate of registration **if the [Secretary of State]** determines that the applicant has engaged in conduct that **has** a significant adverse impact on the applicant's credibility, honesty, or integrity **and** ability to **serve** as an athlete **agent**. **In** making the **determination**, the **[Secretary of State]** may **consider whether** the applicant has:

1 (1) been convicted of a crime which, if committed in this State, would
2 be a felony or a misdemeanor involving moral turpitude;

3 (2) knowingly made a materially false, misleading, deceptive, or
4 **fraudulent representation** as an athlete agent or in the application;

5 (3) engaged in acts that would **disqualify** the applicant **from serving in a**
6 **fiduciary capacity**;

7 (4) **committed any act prohibited by Section 115**;

8 (5) had a registration suspended, revoked, or **denied** or been **refused**
9 **renewal of registration** in any **State**; or

10 (6) taken action that resulted in the imposition of a **sanction**, suspension,
11 or declaration of **ineligibility to participate in an** interscholastic or intercollegiate
12 athletic event on a **student-athlete** or educational **institution**.

13 (d) In making a **determination** under subsection (c), the **[Secretary of State]**
14 **shall consider**:

15 (1) the period between the conduct and the **application**;

16 (2) the nature of the **conduct** and the context in which it **occurred**; and

17 (3) any activity of the applicant since the conduct which demonstrates
18 that the conduct is unlikely to recur.

19 **Reporter's Notes**

20 The intention of subsections (c) and (d) is not to have certain conduct
21 automatically **disqualify** an individual **from** registration, but to allow the licensing
22 **agency** to make a qualitative **determination** of the likelihood the individual, if
23 **registered, would engage** in conduct **detrimental** to a student-athlete or an education
24 **institution, or both**.

1 **SECTION 107. RENEWAL,**

2 **(a) An athlete agent may apply to renew a registration by filing an**
3 **application for renewal in a form prescribed by the [Secretary of State].**

4 **★ (b) An individual who has filed an application for renewal in another State,**
5 **in lieu of filing an application far renewal in ~~this State~~, may file a copy of the**
6 **application for renewal from the other State. ’**

7 The [Secretary of State] shall accept the **application for renewal from the**
8 **other State as an application for renewal in this State if:**

9 **(1) the application from the other State was filed in the other State**
10 **within the next preceding six months or the applicant certifies the information**
11 **contained in the application is current; and**

12 **(2) the application for renewal from the other State contains information**
13 **substantially similar to or more detailed than that required in an application for**
14 **renewal filed in this State.**

15 **Reporter% Notes**

16 **The Committee felt that renewal of registration ought to utilize renewals in**
17 **other States in the same way that original registrations do.**

18 **SECTION 108. SUSPENSION, REVOCATION, OR REFUSAL TO**
19 **RENEW REGISTRATION. The [Secretary of State] may suspend, revoke, or**
20 **refuse to renew a registration for any reason that would have justified denial of a**
21 **registration under Section 106(c).**

1 SECTION 109. TEMPORARY REGISTRATION. The [Secretary of **State**]
2 may issue a **temporary** certificate of **registration** while considering an application
3 for **registration** or **renewal**.

4 SECTION 110. **REGISTRATION FEE.** An application for registration or
5 renewal of registration must be **accompanied** by a **fee** in the following amount:

6 **(1) [\$] for an initial application for registration;**

7 **(2) [\$] for an application for registration based upon a certificate of**
8 registration issued by another State;

9 **(3) [\$] for an application for renewal of registration; or**

10 **(4) [\$] for an application for renewal based upon an application for renewal**
11 filed in another State.

12 Reporter's Notes

13 Although the question is one **for** each State to **determine for** itself, the
14 Committee **felt that** most States would be inclined to set **fees in** amounts to recover
15 the costs of registration. **In** that case, a registration or **renewal fee** based on a
16 registration or **renewal** in another State ought to be less than a registration or
17 renewal **fee where** the registering State was **required** to evaluate the application
18 **rather than determine whether one had been issued in another State and the status of**
19 **that State's law on athlete agents.**

20 [SECTION 111. **LIABILITY INSURANCE.**

21 (a) An **application** for registration must be accompanied by evidence of
22 **errors** and omissions liability **insurance** applicable to the activities of **an** athlete
23 agent in the amount of **[(\$100,000)]** or equivalent security.

1 (3) a **description** of any expenses that the **student-athlete agrees** to
2 **reimburse;**

3 (4) a **description** of the services to **be** furnished to the student-athlete;
4 and

5 (5) **the** duration of the **contract**.

6 (c) An agency contract must **contain**, in close proximity to the signature of
7 **the** student-athlete, a conspicuous notice in **boldface** type in capital letters **stating:**

8 **WARNING TO STUDENT-ATHLETE**

9 IF YOU SIGN THIS **CONTRACT**, YOU WILL LOSS YOUR ELIGIBILITY
10 TO COMPETE IN YOUR SPORT. **BOTH YOU AND YOUR ATHLETE**
11 **AGENT ARE REQUIRED TO TELL YOUR ATHLETIC DIRECTOR IF YOU**
12 **SIGN THIS CONTRACT. IF YOU SIGN, YOU MAY CANCEL THIS**
13 **CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF**
14 **THE CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.**

15 (d) An agency contract that does not **conform** to this **section** is voidable by
16 the **student-athlete**.

17 Reporter's Notes

18 **With regard to subsection (b), the committee was particularly concerned**
19 **with anecdotal information that "gifts," such as automobiles, given to student-**
20 **athletes to induce them to enter into agency contracts are in fact loans that are**
21 **repaid from the student-athlete's future earnings. Accordingly, the Committee**
22 **sought to have the contract clearly disclose those types of arrangements.**

23 **In subsection (d), the Committee felt that since the student-athlete loses**
24 **eligibility when an agency contract is signed, a contract that does not comply with**
25 **this section ought to give the student-athlete the benefit of his or her bargain and**
26 **therefore should be voidable at the option of the student-athlete. The student-**
27 **athlete would exercise this option under Section 114 and would be entitled to keep**

1 any inducements received from the agent. This should be contrasted with an
2 agency contract with an individual required to register as an athlete agent but who
3 did not. In that case, the Committee felt the student-athlete should not be able, in
4 effect, to ratify an unlawful agreement

5 **SECTION 113. NOTICE TO EDUCATIONAL INSTITUTION.**

6 (a) Within 72 hours after entering into an agency contract or before the
7 student-athlete participates in the next scheduled athletic event, whichever comes
8 first, the athlete agent shall give written notice of the existence of the contract to the
9 athletic director of the educational institution at which the student-athlete is
10 enrolled or the athlete agent has reasonable grounds to believe the student-athlete
11 intends to enroll.

12 (b) Within 72 hours after entering into an agency contract or before the
13 student-athlete participates in the next athletic event, whichever occurs first, the
14 student-athlete shall inform the athletic director of the educational institution at
15 which the student-athlete is enrolled that he or she has entered into an agency
16 contract.

17 **SECTION 114. STUDENT-ATHLETE'S RIGHT TO CANCEL.**

18 (a) A student-athlete may cancel an agency contract by giving written
19 notice to the athlete agent of the cancellation within 14 days after the contract is
20 signed.

21 (b) A student-athlete may not waive the right to cancel an agency contract.

22 (c) If a student-athlete cancels an agency contract, the student-athlete is not
23 obligated to pay any consideration to the athlete agent and the student-athlete is not

1 required to **return** anything of value **received from the agent to induce the signing of**
2 **the contract.**

3 **SECTION 115. PROHIBITED ACTS.**

4 (a) An athlete agent may not do any of the following to induce a student-
5 athlete to enter into an agency contract

6 (1) give any false or misleading information or make a false promise or
7 representation;

8 (2) furnish anything of value or benefit to a student-athlete before
9 signing an agency contract with the student-athlete; or

10 (3) furnish anything of value or benefit to any individual other than the
11 student-athlete before signing the agency contract with the student-athlete.

12 (b) An athlete agent may not

13 (1) postdate any agency contract, professional sports-services contract,
14 or endorsement con-

15 (2) do business as an athlete agent without complying with this [Act];

16 (3) contact a student-athlete before being registered under this [Act]; or

17 (4) refuse or wilfully fail to maintain or permit inspection of the records
18 required by Section 116.

19 **SECTION 116. RECORDKEEPING.**

20 (a) An athlete agent shall maintain a copy of any agency contract entered
21 into between the athlete agent and a student-athlete for a period of five years.

1 **(b) Information required by s§ion (a) to be maintained is open to**
 2 **inspection by the [Secretary of State] during normal business hours.**

3 **SECTION 117. CIVIL REMEDIES.**

4 **(a) An athlete agent who violates this [Act] is liable for damages caused by**
 5 **the violation and for reasonable attorney’s fees.**

6 **(b) Damages of an educational institution include damages incurred**
 7 **because, as a result of the activities of an athlete agent, the educational institution**
 8 **was penalized, disqualified, or suspended from participation in athletics by a**
 9 **national association for the promotion and regulation of athletics, by an athletic**
 10 **conference, or by reasonable self-imposed disciplinary action to mitigate sanctions.**

11 **(c) This [Act] does not restrict tights, remedies, or defenses under the**
 12 **common law.**

13 **(d) A claim under this section does not accrue until the educational**
 14 **institution discovers or by the exercise of reasonable diligence would have**
 15 **discovered the alleged violation by the athlete agent.**

1 6 **Reporter’s** Notes

17 **The purpose of this section is to give a cause of action to an educational**
 18 **institution that is sanctioned as a consequence of activities of au athlete agent. For**
 19 **example, in the circumstance where an athlete agent enters into an agency contract**
 20 **with a student-athlete and fails to notify the institution within 72 hours or prior to**
 21 **the next participation by the student-athlete and the institution is disqualified from**
 22 **post-season participation because of that, it is the Committee’s intention to create a**
 23 **cause of action for the resulting loss of revenue.**

1 **SECTION 122. REPEALS. The following acts and parts of acts are hereby**
2 **repealed:**

SECTION 123. EFFECTIVE DATE. This [Act] takes effect _____.

By NOOK
today
9/29

O-NOTE

1

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

RM
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Regen

1 AN ACT to create 100.179 of the statutes; relating to: regulation of athletic
2 agents, granting rule-making authority and providing a penalty

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be prepared for a subsequent version of this draft.

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:

3 SECTION 1. 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

INSERT 1-3 ↓

1 agent contract, professional sports services contract or endorsement contract, or who
2 acts on behalf of such an individual for the purpose of contacting, recruiting or
3 soliciting a student athlete to enter into such a contract.

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

6 (d) "Compensation" means direct or indirect payment of anything of value,
7 including the expectation of such payment whether or not actually received.

8 (e) "Contact" means a communication by any means between an athletic agent
9 and student athlete to induce or attempt to induce the student athlete to enter into
10 an agent contract, professional sports services contract or endorsement contract.

11 (f) "Educational institution" means a public or private junior or senior high
12 school or postsecondary school that a student athlete attends, has last attended or
13 to which the student athlete has expressed written intention to attend.

14 (g) "Endorsement contract" means any contract or agreement pursuant to
15 which an individual is employed or receives compensation for any value or utility
16 that the individual may have due to publicity, reputation, fame or following because
17 of athletic ability or performance.

18 (h) "Jurisdiction" means a state or territory of the United States or another
19 country.

20 (i) "Professional sports services contract" means an agreement pursuant to
21 which a student athlete is employed or agrees to render services as a player on a
22 professional sports team or organization or as a professional athlete.

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

INSERT 2-22 J

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 who is attending or has
6 expressed a written intention to attend an educational institution in this state unless
7 the individual is registered under sub. (3).

8 (b) An individual who is not registered under sub. (3) may contact a student
9 athlete who is attending or has expressed a written intention to attend an
10 educational institution in this state if each of the following is satisfied:

11 1. The student athlete or a person acting on behalf of the student athlete
12 initiates the contact. INSERT 3-12

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

16 (3) **REGISTRATION OF ATHLETIC AGENTS.** (a) The department shall register an
17 individual as an athletic agent if the individual does each of the following:

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

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

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

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

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 employes.

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 from or related to
25 the acts or omissions of the applicant.

INSERT 5-5 ↓

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. Evidence satisfactory to the department that the individual is registered
6 as an athletic agent with a professional players association.~~

7 13. Any other information required by the department.

INSERT 5-8 ↓

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

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

INSERT 5-21 ↓

- 19 1. The registration renewal fee established in rules promulgated under par. (e).
- 20 2. Evidence satisfactory to the department that the applicant has in effect the
21 malpractice liability insurance coverage specified in sub. (4) (a).

22 (e) The department shall promulgate rules establishing the amount of an
23 initial registration fee required to be paid under par. (a) ^s and the amount of a
24 registration renewal fee required to be paid under par. (d). The amount of the fees

INSERT
6-2

1 shall reflect the approximate administrative and enforcement costs of the
2 department that are attributable to the ^{registration of} regulation/athletic agents under this section.

3 (4) MALPRACTICE LIABILITY INSURANCE. (a) Each individual registered as an
4 athletic agent under this section shall have in effect. malpractice liability insurance
5 coverage in an amount that is not less than ~~\$1,000,000~~ ^{\$100,000} per occurrence and
6 ~~\$1,000,000~~ ^{\$100,000} for all occurrences in one year.

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

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

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

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

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

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

22 1. A recitation of the compensation that the athletic agent will receive from the
23 student athlete.

24 2. A description of any compensation that the athletic agent will receive from
25 a source other than the student athlete.

INSERT 6-25

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

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

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

7 6. The duration of the contract.

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

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

23 (d) A student athlete may cancel an agent contract by providing written notice
24 to the athletic agent of the cancellation within 7 days after the date on which the

1 agent contract is signed by the student athlete. A student athlete may not waive the
2 right to cancel an agent contract that is provided under this paragraph.

3 (e) If a student athlete cancels an agent contract under par. (d), the student
4 athlete is not obligated to pay any compensation to the athletic agent. A student
5 athlete who cancels an agent contract under par. (d) shall return to the athletic agent
6 anything of value that was provided by the athletic agent to the student athlete.

7 (6) **NOTICE TO EDUCATIONAL INSTITUTION.** (a) In this subsection, “educational
8 institution” means an educational institution at which a student athlete is enrolled
9 or an educational institution that an athletic agent has reasonable grounds to believe
-10 that a student athlete intends to enroll in the future.

11 (b) 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 athletic
13 agent shall notify the student athlete’s head coach or athletic director of the student
14 athlete’s educational institution.

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

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

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

24 1. Intentionally provide any false or misleading information or intentionally
25 make any false promise or representation.

1

2. ~~offer or~~ provide anything of value or benefit to a student athlete, other than services under the agent contract.

3

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

5

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

6

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

8

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

10

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

11

12

4. ~~Contact~~ a student athlete before being registered under this section.

INSERT 9-12

13

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

16

6. Contact 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.

20

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

24

(8) ^{CS} ~~PLAYERS ASSOCIATION~~ REGISTRATION. An athletic agent shall notify the

PROFESSIONAL

25

department if he or she is registered as an athletic agent by a professional players

in good standing

1 association in addition to the professional players association that is identified under
2 sub. (3) (b) 12. in the application for registration under this section.

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

5 1. The name and address of each student athlete represented by the athletic
6 agent.

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

9 3. Any agent contract entered into between the athletic agent and a student
10 athlete.

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

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

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

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

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

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

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

1

4. Been the subject of ~~disciplinary action~~ ^{a. proceeding or investigation} by a player's association

INSERT
11-1

2

5. Had a ^{reciprocal} registration suspended, revoked or denied in another jurisdiction.

3

6. Subject to ss. 111.321, 111.322 and 111.335, been convicted of an offense the

4

circumstances of which substantially relate to the business of an athletic agent.

5

7. Engaged in any conduct that renders a student athlete ^{or educational institution} ineligible to

6

participate in a sport under the rules of a national association or amateur

7

organization that governs the sport.

8

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

9

(c) In determining whether to reprimand a registrant or deny, limit, suspend

10

or revoke a registration under par. (b), the department shall consider whether the

11

registrant or applicant has provided clear and convincing evidence that the

12

registrant or applicant is fit to serve as an athletic agent notwithstanding the action

13

specified in par. (b) that the registrant or applicant has committed. The department

14

shall also consider each of the following:

15

1. The timing and nature of the action that the registrant or applicant

16

committed and the context in which it occurred.

17

2. Any activities of the registrant or applicant subsequent to the action that the

18

registrant or applicant committed that demonstrate that the registrant or applicant

19

is not likely to commit the action again.

20

(11) PENALTY; CIVIL REMEDY. (a) A person who violates this section or any rule

21

promulgated under this section may be fined not more than \$25,000 or imprisoned

22

for not more than one year or both.

23

(b) A student athlete injured by a violation of this section or any rule

24

promulgated under this section may bring a civil action to recover damages together

INSERT
12-8

1 with costs, disbursements and, notwithstanding s. 814.04 (l), reasonable attorney
2 fees.

any of the following occurs

3 (c) An educational institution may recover damages together with costs,
4 disbursements and, notwithstanding s. 814.04 (1), reasonable attorney fees from an
5 athletic agent if ~~if~~ because of the activities of the athletic agent ~~the~~ ^{(; 4) 1} educational
6 institution is penalized, disqualified or suspended from participation in athletics by
7 a national association for the promotion and regulation of athletics, by an athletic
8 conference or by self-imposed disciplinary action to mitigate sanctions.

t---
9 (12) INVESTIGATIONS AND ENFORCEMENT. (a) Whenever the department has
10 reason to believe that a person is in possession, custody or control of any information
11 or documentary material relevant to the enforcement of this section it may require
12 that person to submit a statement or report, under oath or otherwise, as to the facts
13 and circumstances concerning any activity that may be relevant to the enforcement
14 of this section; examine under oath that person with respect to the activity; and
15 execute in writing and cause to be served upon such person a civil investigative
16 demand requiring the person to produce any relevant documentary material for
17 inspection and copying.

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

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

24 (d) If a person fails to file any statement or report, or fails to comply with any
25 civil investigative demand, or fails to obey any subpoena issued by the department,

1 such person may be coerced as provided in s. 885.12, except that no person shall be
2 required to furnish any testimony or evidence under this subsection that might tend
3 to incriminate the person.

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

9 **SECTION 2. Nonstatutory provisions.**

10 (1) In this section, "department" means the department of agriculture, trade
11 and consumer protection.

12 (2) The department shall submit in proposed form the rules required under
13 section 100.179 (3) (e) of the statutes, as created by this act, to the legislative council
14 staff under section 227.15 (1) of the statutes no later than the first day of the 6th
15 month beginning after the effective date of this subsection.

16 (3) Using the procedure under section 227.24 of the statutes, the department
17 may promulgate rules required under section 100.179 (3) (e) of the statutes, as
18 created by this act, for the period before the effective date of the rules submitted
19 under subsection (2), but not to exceed the period authorized under section 227.24
20 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b) and (3)
21 of the statutes, the department is not required to provide evidence that promulgating
22 a rule under this subsection as an emergency rule is necessary for the preservation
23 of the public peace, health, safety or welfare and is not required to provide a finding
24 of emergency for a rule promulgated under this subsection.

0

**1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3119/1ins2
MDK:.....

INSERT A:

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 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 ~~7~~ ^{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 ~~the~~ 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 recorded at the circumstances of which substantially relate to acting as ~~an~~ ^{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 ~~2~~ ^{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 cancelled. 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} 7 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.

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.

1 **INSERT 1-3:**

2 **SECTION 4.** 93.135 (1) (rp) of the statutes is created to read:
3 93.135 (1) (rp) A registration under s. 100.179.'

4 **INSERT 2-22:**

5 (im) "Reciprocal registration" means a license, registration or certificate issued
6 by another jurisdiction that allows an individual to act as an athletic agent in that
7 jurisdiction.

8 **INSERT 3-12:**

9 has initiated communication with the individual

10 **INSERT 5-5:**

11 12. If the individual is registered as an athletic agent with a professional
12 players association for a sport for which the individual represents or intends to
13 represent a student athlete, evidence satisfactory to the department that such
14 registration is in good standing with the professional players association.

15 **INSERT 5-8:**

16 on a form provided by the department

17 **INSERT 5-2 1:**

18 (dm) No withstanding the requirement under par. (c) or (d) to submit an
19 application on a form provided the department, an applicant under par. (c) or (d) who
20 has been issued a reciprocal registration may submit to the department a copy of an
21 application for initial registration or registration renewal that the applicant has filed
22 with the jurisdiction that issued the reciprocal registration. The department shall

✓

1 accept a copy submitted under this paragraph in lieu of an initial or renewal
2 application form that 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 **INSERT 6-2:**

8 The rules may require an applicant who has been issued a reciprocal registration to
9 pay an initial registration fee or registration renewal fee that is different than the
10 initial registration fee or registration renewal fee required for an applicant who has
11 not been issued a reciprocal registration if the department determines that
12 administrative and enforcement costs that are attributable to applicants who have
13 been issued a reciprocal registration are different than the administrative
14 enforcement costs that are attributable to applicants who have not been issued a
15 reciprocal registration.

16 **INSERT 6-25:**

17 for providing services under the agent contract

18 **INSERT 9-12:**

19 Except as provided in sub. (2) (b), ✓

20 **INSERT 11-1:**

21 that has resulted in the professional players association imposing a disciplinary
22 sanction against the applicant or registrant

23 **INSERT 12-8:**



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

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3 119/1dn

MDK: /:....

Wlj

Please review this bill to make sure that it achieves your intent. In particular, please note the following:

1. Proposed s. 93.135 (1) (~~rm~~⁸) is included in this version of the bill so that athletic agent registration is treated in the same manner as other DATCP licenses or registrations with respect to denial, nonrenewal, suspension or restriction based on failure to pay child support.

2. Proposed s. 100.179 (2) (a) and (b) ~~have~~^{has} been revised to ~~prohibit~~^{to}, with certain exceptions, contacting a student athlete in this state. It seems to that this approach is preferable to prohibiting, with certain exceptions, contacting a student athlete who either: 1) is attending an institution in this state, 2) has expressed a written intention to attend such an institution, or 3) plans to attend such an institution. It would be difficult for the state to prove or disprove the ~~3rd~~^{3rd child} option because that option is entirely dependent on the mental state of the student athlete. Therefore, I do not think that it is a workable option. Please contact me if you want to discuss this issue further.

3. Proposed s. 100.179 (7) (a) 2. ~~is~~^{4. has been} revised to prohibit providing anything of value or benefit, rather than prohibiting *offering* or providing anything of value or benefit. I made this change because it is consistent with the uniform act, as well as with proposed s. 100.179 (7) (a) 3. ↓

4. A severability provision is not necessary. Under Wisconsin law, the unconstitutionality of any provision of a statute does not affect other provisions that can be given effect independently of the unconstitutional provision if severing the unconstitutional portion does not foil the legislature's manifest intent. See s. 990.001 (11) and *Burlington Northern v. City of Superior*, 131 Wis. 2d 564, 579-87 (1986), *cert denied*, 107 S. Ct. 883 (1987), *Wis. Wine & Spirit Institute v. Ley*, 141 Wis. 2d 958, 971-72 (Ct. App. 1987) and *Town of Clearfield v. Cushman*, 150 Wis. 2d 10, 22-4 (1989).

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
E-mail: Mark.Kunkel@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3119/1dn
MDK:wlj:jf

September 29, 1999

Please review this bill to make sure that it achieves your intent. In particular, please note the following:

1. Proposed s. 93.135 (1) (rp) is included in this version of the bill so that athletic agent registration is treated in the same manner as other DATCP licenses or registrations with respect to denial, nonrenewal, suspension or restriction based on failure to pay child support.

2. Proposed s. 100.179 (2) (a) and (b) has been revised to prohibit, with certain exceptions, contacting a student athlete in this state. It seems that this approach is preferable to prohibiting, with certain exceptions, contacting a student athlete who either: 1) is attending an institution in this state, 2) has expressed a written intention to attend such an institution,, or 3) plans to attend such an institution. It would be difficult for the state to prove or disprove the third option because that option is entirely dependent on the mental state of the student athlete. Therefore, I do not think that it is a workable option. Please contact me if you want to discuss this issue further.

3. Proposed s. 100.179 (7) (a) 2. has been revised to prohibit providing anything of value or benefit, rather than prohibiting *offering* or providing anything of value or benefit. I made this change because it is consistent with the uniform act, as well as with proposed s. 100.179 (7) (a) 3.

4. A severability provision is not necessary. Under Wisconsin law, the unconstitutionality of any provision of a statute does not affect other provisions that can be given effect independently of the unconstitutional provision if severing the unconstitutional portion does not foil the legislature's manifest intent. See s. 990.001 (11) and *Burlington Northern v. City of Superior*, 131 Wis. 2d 564, 579-87 (1986), *cert denied*, 107 S. Ct. 883 (1987), *Wis. Wine & Spirit Institute v. Ley*, 141 Wis. 2d 958, 971-72 (Ct. App. 1987) and *Town of Clear-field v. Cushman*, 150 Wis. 2d 10, 22-4 (1989).

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
E-mail: Mark.Kunkel@legis.state.wi.us

NOTE: PLEASE RETURN THIS BILL DRAFT AND THIS TRANSMITTAL SHEET WITH YOUR FISCAL ESTIMATE FORMS

IF THERE IS A FISCAL EFFECT TO THE BILL PLEASE SUBMIT THE FISCAL ESTIMATE WORKSHEET

TO: **Barb Knapp**

Department of Agriculture, Trade and Consumer Protection

FROM: Deborah Uecker
Division of Executive Budget and Finance
101 East Wilson Street
Administration Building, 10th Floor
Madison, WI 53707

SUBJECT: Fiscal Estimate - LRB Number 3119/1
1999 Bill Number

*Unintroduced
copy to
Rep. Wickert*

Please provide the necessary information on fiscal estimate forms and return the original AND one copy of the original to:

Deborah Uecker, no later than: 06 Oct 99

If you cannot comply with the above deadline for any reason, please call Deborah at 267-0371.

Provide local government costs

_____ is responsible for local government costs.

ALSO SENT TO:
Department of Agriculture, Trade and Consumer Protection

DATE DOA SENT TO AGENCY:

29-Sep-99

DATE DOA RECEIVED FROM AGENCY:

10/13/99

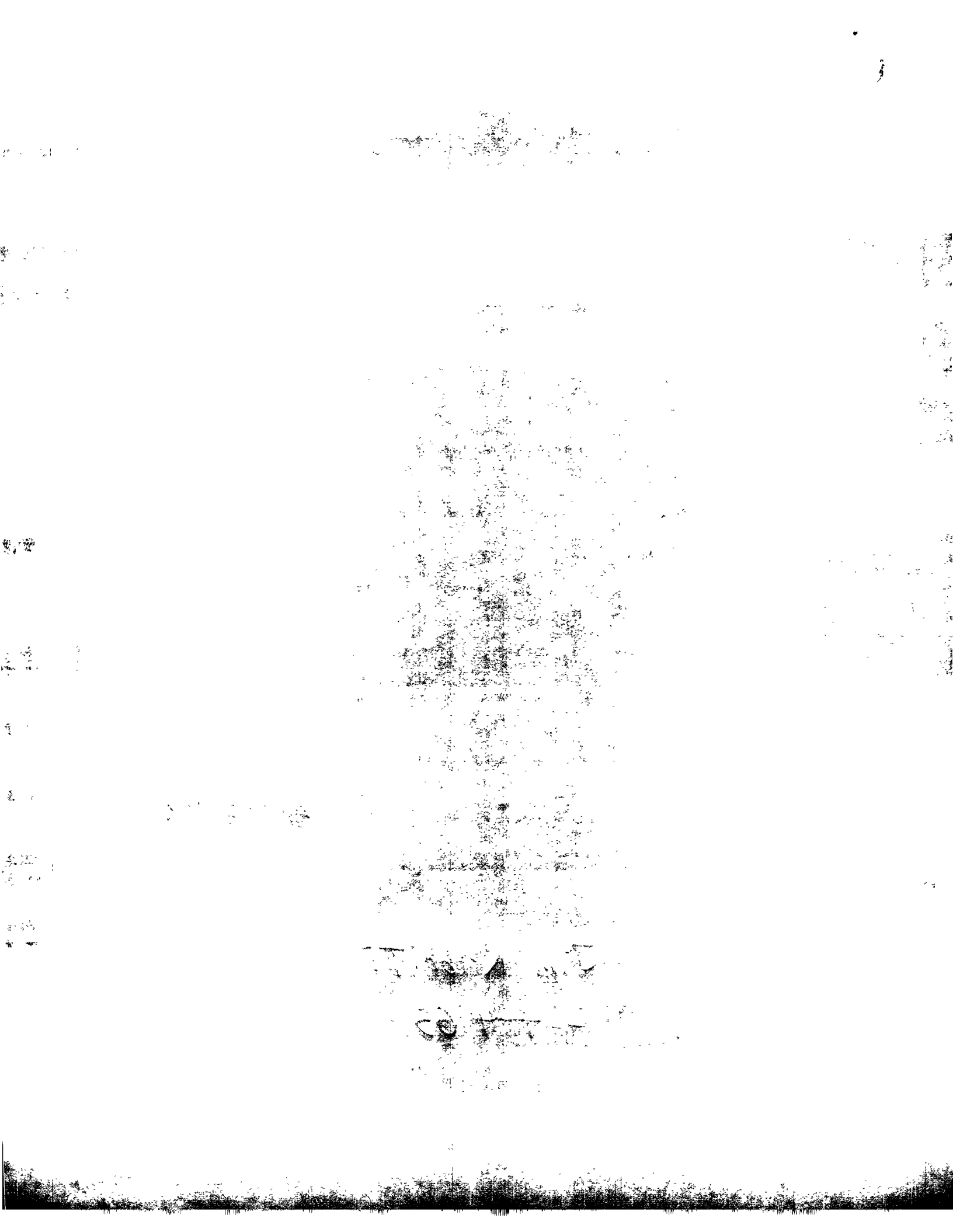
TO BE COMPLETED BY AGENCY:

Name and phone number of person who prepared the fiscal estimate.

Jim Rabbitt
(Name)

224-4965
(Phone Number)

PLEASE SEND ORIGINAL COPIES OF THE FORMS THAT CAN BE REPRODUCED.



FISCAL ESTIMATE

DOA-2048 N(R10/94)

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No

LRB 3119/1

Amendment No If Applicable

Subject **Regulation of Athletic Agents**

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum certain appropriation

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected
 Towns Village Cities
 Counties0 Others _____
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

20.115(l)(a)

Assumptions Used in Arriving at Fiscal Estimate

This bill regulates and requires registration of persons who act as athletic agents.

This bill requires an athletic agent to register with DATCP. The agent must submit proof of liability insurance and evidence of no criminal convictions. It requires the agent to provide and DATCP to keep on file the names and addresses of professional references, all clients, and any person with financial interest in the agent's operation. It also requires the agent to provide descriptions of training or experience in the field, criminal convictions, judicial proceedings related to the agents business, and sanctions imposed on the agents clients due to the agents activities. It allows registrations in other jurisdictions to be recognized based on the department's examination of the requirements of the other jurisdiction. It also requires DATCP to update the public listing of registered agents on a bimonthly basis.

It is assumed the department will expend one time money to hire a contract computer programmer to develop a database to capture the information required for registration and issue registration certificates. The department will also expend significant time promulgating rules under this section. Certain staff costs for this activity will be absorbed, however, a limited term researcher will be needed to support the rulemaking process and research other jurisdiction's contract requirements in order to establish reciprocal agreements.

Registrations requiring this volume of information will require significant staff time to process, file, and update on a bimonthly. Investigations into allegations of violations of this section will be lengthy and complicated with the potential for high profile, high cost cases. Based on these assumptions, the Department estimates a 1.0 FTE Regulation Compliance Investigator and a 1.0 FTE Program Assistant will be necessary for enforcement of this law.

Ongoing costs could be offset by registration fees. However, initial rulemaking, research, and programming costs will be necessary to begin the process. Additionally, annual costs for the first year will be needed to fund the program until licensing fees are available to fund ongoing costs.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)

DATCP
Jim Rabbitt 224-4965

Authorized Signature/Telephone No.

Barbara Knapp

Date

10/11/99

FISCAL ESTIMATE WORKSHEET

1999 Session

Detailed Estimate of Annual Fiscal Effect

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No/Adm. Rule No.	Amendment No.
LRB 3119/1	

DOA-2047 (RI0194)

Subject

Regulation of Athletic Agents

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

\$55,350 (Computer, Workstation, Programming License Database)

II. Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations - Salaries and Fringes		\$62,750.00	
(FTE Position Changes)		(2.0 FTE)	(- FTE)
State Operations - Other Costs		\$14,420	
Local Assistance			
Aids to Individuals and Organizations			
TOTAL State Costs by Category		\$77,170.00	
B. State Costs by Source of Funds		Increased Costs	Decreased Costs
GPR		\$77,170	
FED			
PROIPRS			
SEGISSEG-S			
III. State Revenues		Increased Rev.	Decreased Rev.
GPR Taxes			
GPR Earned			
FED			
PROIPRS			
SEGISSEG-S			
TOTAL State Revenues			

NET ANNUALIZED FISCAL IMPACT

STATE

LOCAL

NET CHANGE IN COSTS

\$77,170

NET CHANGE IN REVENUES

Agency/Prepared by: (Name & Phone No.)

Authorized Signature/Telephone No.

Date

DATCP Jim Rabbitt 224-4965



By wcd
10/20

NOTE

1999 BILL

2

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RUN

Regen

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

***BILL**

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.

BILL

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.

BILL

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 (j) "Registr⁴nt" means an individual who is registered under this section.

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

INSERT 4-20

BILL

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

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

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

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

Except as provided in sub. (1)(b)

(3) REGISTRATION OF ATHLETIC AGENTS. (a) The department shall register an individual as an athletic agent if the individual does each of the following:

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

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

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

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

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

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

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

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BILL

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

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

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

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

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

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

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

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

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

BILL

INSERT 71

1 12. If the individual is registered as an athletic agent with a professional
2 players association for a sport for which the individual represents or intends to
3 represent a student athlete, evidence satisfactory to the department that such
4 registration is in good standing with the professional players association.

5 13. Any other information required by the department.

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

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

(a) or reciprocal registration renewal

- 17 1. The registration renewal fee established in rules promulgated under par. (e).
- 18 2. Evidence satisfactory to the department that the applicant has in effect the
- 19 malpractice liability insurance coverage specified in sub. (4) (a).

20 (dm) No withstanding the requirement under par. (c) or (d) to submit an
21 application on a form provided the department, an applicant under par. (c) or (d) who,
22 has been issued a reciprocal registration may submit to the department a copy of ^{the} ~~an~~
23 application for ~~initial~~ ^{reciprocal} registration or ~~reciprocal~~ ^{reciprocal} registration renewal that the applicant has filed
24 ~~with the jurisdiction that issued the reciprocal registration.~~ The department shall

BILL

1 accept ~~a~~ copy submitted under this paragraph in lieu of an initial or renewal
2 application form that 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 ~~that~~ ^{shall} require an applicant who has been issued a reciprocal
13 registration to pay an initial registration fee or registration renewal fee that is
14 ~~different~~ ^{lower} than the initial registration fee or registration renewal fee required for an
15 applicant who has not been issued a reciprocal registration if the department
16 determines that administrative and enforcement costs that are attributable to
17 applicants who have been issued a reciprocal registration are ~~different~~ ^{lower} than the
18 administrative enforcement costs that are attributable to applicants who have not
19 been issued a reciprocal registration.

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

the appropriate

for reciprocal registration renewal

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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.

BILL

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

· **BILL**

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.

BILL

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. Contact a student athlete unless the athletic agent is registered as an
14 athletic agent by a professional players association for the sport for which the
15 athletic agent intends to negotiate a professional sport services contract for the
16 student athlete.

contract and the

17 *g. 6* Enter into an agent contract, professional sports services contract or
18 endorsement contract with a student athlete unless the athletic agent has provided
19 the student athlete with a copy of the application submitted to the department under
20 sub. (3) (a) 1.

INSERT 12-21 ✓

(9)(b)

21 **(8) PROFESSIONAL PLAYERS ASSOCIATION REGISTRATION.** An athletic agent shall
22 notify the department if he or she is registered in good standing as an athletic agent
23 by a professional players association in addition to the professional players
24 association that is identified under *par. (a) 1* sub. (3) (a) 1 in the application for registration
25 under this section.

INSERT 12 25 ✓

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

3 1. The name and address of each student athlete represented by the athletic
4 agent.

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

7 3. Any agent contract entered into between the athletic agent and a student
8 athlete.

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

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

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

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

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

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

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

BILL

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

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

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

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

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

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

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

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

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

BILL

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

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

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

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

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

18 (12) INVESTIGATIONS AND ENFORCEMENT. (a) Whenever the department has
19 reason to believe that a person is in possession, custody or control of any information
20 or documentary material relevant to the enforcement of this section it may require
21 that person to submit a statement or report, under oath or otherwise, as to the facts
22 and circumstances concerning any activity that may be relevant to the enforcement
23 of this section; examine under oath that 'person with respect to the activity; and
24 execute in writing and cause to be served upon such person a civil investigative

.BILL

1 demand requiring the person to produce any relevant documentary material for
2 inspection and copying.

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

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

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

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

19 **SECTION 3. Nonstatutory provisions.**

20 (1) In this section, "department" means the department of agriculture, trade
21 and consumer protection.

22 (2) The department shall submit in proposed form the rules required under
23 section 100.179 (3) (e) of the statutes, as created by this act, to the legislative council
24 staff under section 227.15 (1) of the statutes no later than the first day of the 6th
25 month beginning after the effective date of this subsection.

BILL

1 (3) Using the procedure under section 227.24 of the statutes, the department
2 may promulgate rules required under section 100.179 (3) (e) of the statutes, as
3 created by this act, for the period before the effective date of the rules submitted
4 under subsection (2), but not to exceed the period authorized under section 227.24
5 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b) and (3)
6 of the statutes, the department is not required to provide evidence that promulgating
7 a rule under this subsection as an emergency rule is necessary for the preservation
8 of the public peace, health, safety or welfare and is not required to provide a finding
9 of emergency for a rule promulgated under this subsection.

10 **SECTION 4. Effective dates.** This act takes effect on the first day of the 3rd
11 month beginning after publication, except as follows:

12 (1) **SECTION 3** of this act takes effect on the day after publication.

13 (END)

**1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3 119/2ins
MDK:.....

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INSERT 4-20:

ff (is) "Reciprocal registration renewal" means the renewal of a reciprocal registration by another jurisdiction.

INSERT 7-1:

No ff

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

INSERT 12-21:

No ff

(a) An individual who applies for registration under this section as an athletic agent and who is registered as an athletic agent with a professional players association for a sport for which the individual represents or intends to represent a student athlete shall provide on the application for registration under this section evidence satisfactory to the department that the registration with the professional players association is in good standing.

INSERT 12-25:

ff (c) An athletic agent may not contact 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.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3119/2dn

MDK:/:....

WJ

Representative Wieckert:

This version makes changes that I discussed with James Bonneville. Note that although the language regarding reciprocal fees is slightly different than the language that I discussed with James, I believe that the proposed language achieves your intent.

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
E-mail: Mark.Kunkel@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

**LRB-3 119/2dn
MDK:wlj:km**

October 18, 1999

Representative Wieckert:

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Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
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1999

CCC to / AB- 709

Page 10, line 10: after "CONTRACT" insert a period.

WLS

ASSEMBLY BILL 709

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



State of Wisconsin
1999-2000 LEGISLATURE

CORRECTIONS IN:

1999 ASSEMBLY BILL 709

Prepared by the Legislative Reference Bureau
(March 15, 2000)

- 1 . Page 10, line 10: after "CONTRACT" insert a period.



CORRECTIONS IN: **CCC (LRB-3119/2)**

TO 1999 ASSEMBLY BILL 709

()

Prepared by the Legislative Reference Bureau
(Date)

1. Page 8, line 19: delete "administrative" and substitute "administrative and".
2. Page 17, line 12: delete "the d to" and substitute "the department is not required to".

KMG:

.....

Minor clerical corrections in legislation are authorized under s. 35.17, stats.; Senate Rule 31, Assembly Rule 37 and Joint Rule 56.

ASSEMBLY BILL 709

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:

3 1. The applicant certifies that the information provided is true and correct.

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

7 (e) The department shall promulgate rules regarding the
8 initial registration fee required to be paid under
9 of a registration renewal fee required to be paid
10 fees shall reflect the approximate administrative costs

11 department that are attributable to the registration
12 section. The rules shall require an applicant who has
13 registration or reciprocal registration renewal to pay
14 registration renewal fee that is lower than the initial
15 renewal fee required for an applicant who has not had
16 registration or reciprocal registration renewal if the applicant
17 administrative and enforcement costs that are attributable to

18 been issued a reciprocal registration or reciprocal registration renewal fee that is lower
19 than the administrative and 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.

Karen:
- PJD thinks this change qualifies as a "CCC" because the phrase "administrative and enforcement" is used throughout the bill, whereas there is only 1 hit on the

phrase "administrative enforcement." Therefore, it's easier to say that the 1 hit is clearly a mistake.

Please give me a call when you have a chance.

- MDK

and

ASSEMBLY BILL 709

1 (1) In this section, "department" means the department of agriculture, trade
2 and consumer protection.

3 (2) The department **shall** submit in proposed form the **rules** required under
- 4 section 100.179 (3) (e) of the statutes, as created by this act, to the legislative council
5 staff under section 227.15 (1) of the statutes no later than the **first** day of the 6th
6 month beginning after the effective date of this subsection.

7 (3) Using the procedure under section 227.24 of the statutes, the department
8 may promulgate rules required under section 100.179 (3) (e) of the statutes, as
9 created by this act, for the period before the effective date of the rules submitted
10 under subsection (2), but not to exceed the period authorized under section 227.24
11 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b) and (3)
12 of the statutes, ~~the department~~ to provide evidence that promulgating a **rule** under **this**
13 subsection as an emergency rule is necessary for the preservation of the public peace,
14 health, safety or welfare and is not required to provide a finding-of emergency for a
15 rule promulgated under **this subsection**.

16 **SECTION 4. Effective dates.** This act takes effect on the first day of the 3rd
17 month beginning after publication, except as follows:

18 (1) **SECTION 3** of this act takes effect on the day after publication.

19 (END)

department is not required



State of Wisconsin
1999-2000 LEGISLATURE

CORRECTIONS

IN:

1999 ASSEMBLY BILL 709

Prepared by the Legislative Reference Bureau
(March 27, 2000)

1. Page 8, line 19: delete “administrative” and substitute “administrative and”.
2. Page 17, line 12: delete “the d to” and substitute “the department is not required to”.

LRB-3119/2ccc-2
KMG:ch

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