

2001 DRAFTING REQUEST

Bill

Received: **05/03/2001**

Received By: **kunkemd**

Wanted: **As time permits**

Identical to LRB:

For: **Steve Wieckert (608) 266-3070**

By/Representing: **Cale Battles**

This file may be shown to any legislator: **NO**

Drafter: **kunkemd**

May Contact:

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Pre Topic:

No specific pre topic given

Topic:

Uniform athlete agents act

Instructions:

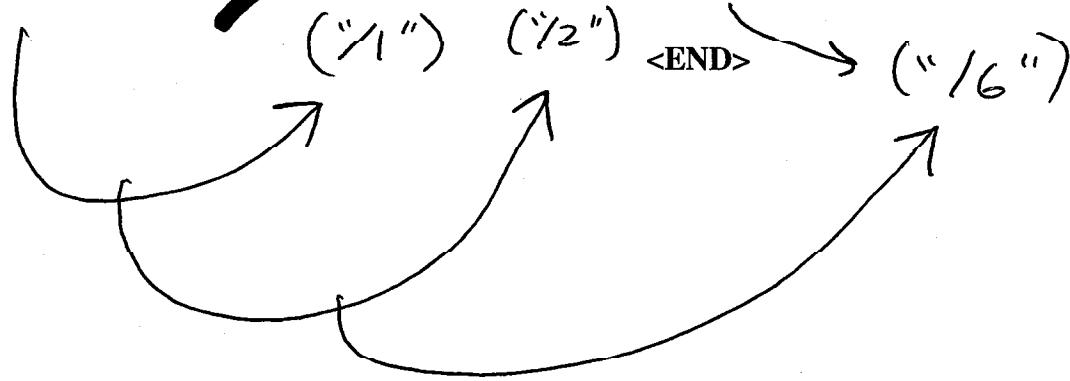
See Attached

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FE Sent For: ~~05/21/2001~~ **05/21/2001, 06/11/2001, 01/28/2002.**



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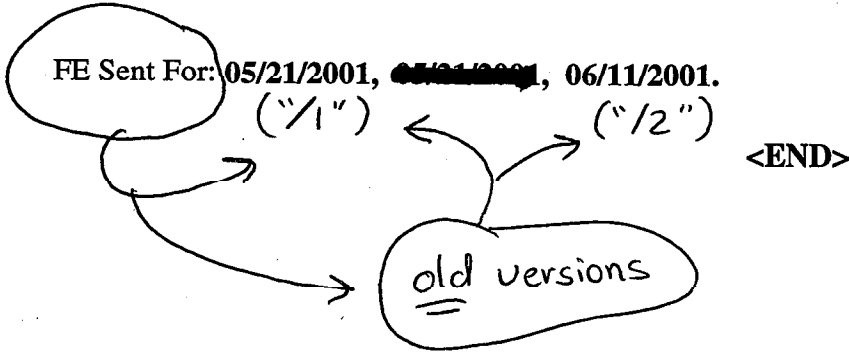
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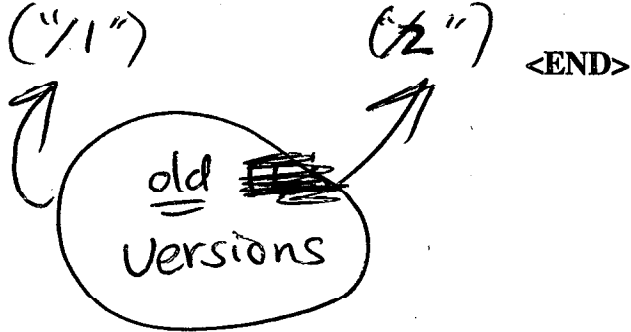
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PG 6/14
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→ ("2") (current)

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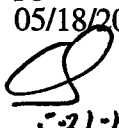
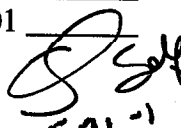
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18-01

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PS/KJF

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*****NOTES**

FE Sent For:

<END>

Kunkel, Mark

- 3241/1

From: Battles, Cale
Sent: Tuesday, April 03, 2001 9:12 AM
To: Kunkel, Mark
Subject: Athlete Agent

Mark:

I was contacted by the NCAA yesterday regarding the new draft of the athlete agent bill (LRB 2793/1) and they feel that it doesn't accomplish their desired intent. They were hoping that we would follow the exact legislation called the Uniform Athlete Agents Act (2000) passed by the National Conference of Commissioners on Uniform State Law. Their goal is to get all 50 states to pass this same exact law for uniformity and reciprocity through out the nation. Already I believe 27 states have introduced the Uniform Athlete Agents Act and those states almost all just copied the UAAA word for word. Both Rep. Wieckert and I feel that it is very important to have the NCAA on board for this legislation to pass and they would like us to follow the UAAA. So we need to ask for another draft of the athlete agent bill that follows the Uniform Athlete Agents Act. I will be sending you over a copy of the act for your review. If you have any questions please feel free to give me a call. Thank you for all your help and time that you have put into this legislation.

Sincerely,

Cale Battles
Rep. Wieckert's Office
266-3070

MDK
2

UNIFORM ATHLETE AGENTS ACT (2000)

Drafted by the

**NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS**

and by it

**APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES**

at its

**ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-NINTH YEAR
ST. AUGUSTINE, FLORIDA**

JULY 28 – AUGUST 4, 2000

WITH PREFATORY NOTE AND COMMENTS

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By

**NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS**

November 30, 2000

UNIFORM ATHLETE AGENTS ACT

The Committee that acted for the National Conference of Commissioners on Uniform State Laws in preparing the Uniform Athlete Agents Act was as follows:

RICHARD C. HITE, Suite 600, 200 W. Douglas Avenue, Wichita, KS 67202, *Chair*
JERRY L. BASSETT, Legislative Reference Service, 613 Alabama State House, 11 S. Union Street
Montgomery, AL 36130, *Committee Member and Committee on Style Liaison*
TERESA ANN BECK, House Legislative Services Office, P.O. Box 1018, Jackson, MS 39215
ROBERT N. DAVIS, University of Mississippi, School of Law, Law Center Room 559, University, MS
38677, *National Conference Reporter*
CHARLES W. EHRHARDT, Florida State University, College of Law, 425 W. Jefferson Street,
Tallahassee, FL 32306, *Enactment Plan Coordinator*
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

JOHN L. McCLAUGHERTY, P.O. Box 553, Charleston, WV 25322, *President*
JOHN P. BURTON, P.O. Box 1357, Suite 101, 123 E. Marcy Street, Santa Fe, NM 87501, *Division
Chair*

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Government Law Section Advisor*
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73019, *Executive Director*
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Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
211 E. Ontario Street, Suite 1300
Chicago, Illinois 60611
312/915-0195
www.nccusl.org

PREFATORY NOTE

In this era in which many professional athletes are highly compensated, their agents perform many valuable services. Concomitantly, the practices of a minority of agents or would-be agents in obtaining the right to represent athletes who may produce substantial fees for their agents have caused serious problems for student-athletes and educational institutions. The tactics of this minority include secret payments or gifts to the athlete, undisclosed payments or gifts to friends and relatives who may be in a position to influence the athlete, unrealistic promises and considerable arm-twisting.

Headlines chronicle the results of these practices. Athletes lose eligibility and may damage promising professional careers. Universities and colleges are sanctioned. The sanctions can be very severe and may include loss of, or liability to return, substantial revenues for participation in post-season events. Frequently, the non-monetary sanctions have long-term, adverse effects on athletic programs. Perhaps as important as any other effect, the reputations of respected educational institutions are tarnished and there is a severe disruption in the activities of those responsible for administration of the institutions.

As a result of the foregoing, at least twenty-eight states have enacted legislation regulating athlete or sports agents. The statutes differ greatly. About two-thirds of the statutes impose registration requirements. There are substantial differences in the registration procedures, disclosures required and requirements relating to record maintenance, reporting, renewal, notice, warning and security. The term of the registration is one year in thirteen states, two years in four states, and two states do not specify a term. Most states require notification to states or educational institutions and athletes of certain matters, but the matters vary widely. Conscientious agents operating in more than a single state must have nightmares caused by the lack of uniformity in the existing statutes, the difficulty in compliance and the severity of penalties which may be imposed for violations.

Because of the lack of uniformity and lack of reciprocity provisions in existing statutes, the NCAA and several universities asked the Conference to undertake the drafting of a uniform act. After initial reluctance because of the state of its agenda, budgetary considerations and uncertainty that a uniform act in this area of the law conform to established criteria for undertaking drafting efforts, the Conference agreed to do so. The drafting committee met over a period of three years and had valuable input from athlete agents, coaches, individuals responsible for administering existing acts, and representatives of the players associations of the National Football League, the National Hockey League, major league baseball and the NCAA.

Many of the provisions in the Uniform Athlete Agents Act are similar or even identical to provisions found in some of the existing acts. The uniform act follows the majority of states which have required registration of athlete agents. Registration is required before initiating contact with a student-athlete to induce the signing of an agency contract. If the student-athlete initiates contact with an athlete agent, the athlete agent must apply for registration within seven days after commencing any effort to induce the student-athlete to enter into an agency contract. The act includes a list of disclosures which must be made in the application for registration. It also includes a list of factors the administrator of the act must consider and a list of factors the

administrator may consider in determining whether to issue a certificate of registration or suspend, revoke or refuse to renew a registration. The act specifies terms which must be included in an agency contract, requirements of notice to educational institutions after an agency contract has been entered into, the right of the student-athlete to cancel an agency contract within fourteen days after it is signed, and records which must be retained by the athlete agent. Enforcement of the act is provided for by sections which prohibit certain conduct and impose criminal and administrative penalties. The act also provides that an educational institution has civil remedies against either an athlete agent or a former student-athlete for damages caused by violation of the act.

The act does not require security in the form of malpractice insurance or surety bonds as about half of the existing acts do. Those types of security for athlete agents are not widely available. Insurance usually does not cover intentional acts of the type the act prohibits. Further, the existing acts require security in amounts ranging from \$10,000 to \$100,000. Those amounts are inadequate to provide substantial protection. A requirement of greater security would be likely to reduce the already limited market which is available.

Most importantly, the act will establish uniformity and provide for reciprocity among the states adopting it. Provisions for reciprocity are found in the sections relating to registration. Administrators are permitted to accept copies of applications for registration filed in other states which adopt the uniform act and to consider actions taken in another state which has adopted the uniform act in deciding whether to deny, suspend, revoke or refuse to renew registration.

UNIFORM ATHLETE AGENTS ACT

SECTION 1. SHORT TITLE. This [Act] may be cited as the Uniform Athlete Agents Act.

Comment

The title Uniform Athlete Agents Act was selected because a majority of the existing acts regulating the activities of agents representing athletes have similar titles.

SECTION 2. DEFINITIONS. In this [Act]:

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

(2) "Athlete agent" means an individual who enters into an agency contract with a student-athlete or, directly or indirectly, recruits or solicits a student-athlete to enter into an agency contract. The term includes an individual who represents to the public that the individual is an athlete agent. The term does not include a spouse, parent, sibling, [or] grandparent[, or guardian] of the student-athlete or an individual acting solely on behalf of a professional sports team or professional sports organization.

(3) "Athletic director" means an individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or the athletic program for females, as appropriate.

(4) "Contact" means a communication, direct or indirect, between an athlete agent and a student-athlete, to recruit or solicit the student-athlete to enter into an agency contract.

(5) "Endorsement contract" means an agreement under which a student-athlete is

employed or receives consideration to use on behalf of the other party any value that the student-athlete may have because of publicity, reputation, following, or fame obtained because of athletic ability or performance.

(6) "Intercollegiate sport" means a sport played at the collegiate level for which eligibility requirements for participation by a student-athlete are established by a national association for the promotion or regulation of collegiate athletics.

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

(8) "Professional-sports-services contract" means an agreement under which an individual is employed, or agrees to render services, as a player on a professional sports team, with a professional sports organization, or as a professional athlete.

(9) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(10) "Registration" means registration as an athlete agent pursuant to this [Act].

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

(12) "Student-athlete" means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student-athlete for purposes of that sport.

Comment

Only individuals are within the definition of "athlete agent" and therefore required to register under Section 5. Corporations and other business entities do not come within the definition of "athlete agent" and therefore are not required to register under the act, even though individuals employed by the corporation or other business entity as athlete agents would be required to register. The definition also includes other individuals or "runners" used by an agent to recruit or solicit a student-athlete to enter into an agency contract. Attorneys are not excluded from the definition. An attorney does not need to comply with the provisions of this act in order to provide legal services to a student-athlete, but is required to register to perform the services of an athlete agent.

Representatives of "professional sports teams or professional sports organizations," such as baseball teams, are excluded from the definition of "athlete agent" as long as they are acting for their teams or organizations. If a representative should attempt to induce a student-athlete to enter into an agency contract, rather than a contract with the team or organization, registration is required. Also excluded from the definition are individuals who simply provide information to a student-athlete, but who do not recruit or solicit the student-athlete to sign an agency contract. For example, a professional athlete who gives a student-athlete information about the qualifications of an athlete agent is not required to register unless the professional athlete also attempts to recruit or solicit the student-athlete to sign an agency contract. In the exclusion of certain family members from the definition of "athlete agent," the phrase "or guardian" is bracketed because some states may use another term to describe an individual who has legal responsibility for the care of another.

The definition of "contact" does not include communications which merely provide information to the student-athlete. For example, a communication about the position a student-athlete could reasonably expect to have in a professional draft does not constitute recruitment or solicitation to enter into an agency contract.

The definition of "student-athlete" applies to a two-sport athlete who has eligibility remaining in one sport. For example, an individual who has signed a contract to play professional basketball is not a student-athlete in basketball, but is a student-athlete in baseball. The definition of "student-athlete" also includes individuals who are not yet in college. It includes high school students, high school dropouts and high school graduates who have delayed matriculation to a college or university so long as the individual may have future eligibility for intercollegiate sports.

SECTION 3. SERVICE OF PROCESS; SUBPOENAS.

[(a)] By acting as an athlete agent in this State, a nonresident individual appoints the [Secretary of State] as the individual's agent for service of process in any civil action in this State related to the individual's acting as an athlete agent in this State.

[(b)] [The [Secretary of State] may issue subpoenas for any material that is relevant to the administration of this [Act].]

Comment

The office of Secretary of State has been designated as the administrator of existing acts regulating the activities of athlete agents more frequently than any other office. The office of Secretary of State is referred to in subsection (b) and throughout this act. It is recognized, however, that the appropriate state office to administer this act may vary from state to state and, therefore, references to the Secretary of State are in brackets.

Subsection (b) is in brackets because it may not be required under the administrative procedure acts of some states. If subsection (b) is not used, the remainder of the section should not be designated as (a).

SECTION 4. ATHLETE AGENTS: REGISTRATION REQUIRED; VOID CONTRACTS.

(a) Except as otherwise provided in subsection (b), an individual may not act as an athlete agent in this State without holding a certificate of registration under Section 6 or 8.

(b) Before being issued a certificate of registration, an individual may act as an athlete agent in this state for all purposes except signing an agency contract, if:

(1) a student-athlete or another person acting on behalf of the student-athlete initiates communication with the individual; and

(2) within seven days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in this State.

(c) An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract.

Comment

The intent of this section is to make the registration requirement as broad as constitutionally permissible consistent with the minimum contacts theory of *International Shoe Company v. Washington*, 326 U.S. 310 (1945). Agents must register in each state in which they have established minimum contacts. For example, an individual in State A contacting a student-athlete in State B is acting as an athlete agent in both states and is therefore required to register in both states.

Subsection (b) provides a safe harbor for an unregistered individual with whom a student-athlete initiates communications. The individual must apply for registration within seven days from the beginning of any effort to recruit or solicit the student-athlete to enter into agency contract. If the individual does not attempt to recruit or solicit the student-athlete to sign an agency contract, registration is not required. References to "days" in this section and throughout the act mean calendar days.

In addition to the penalties which may be imposed under Sections 15 and 17, subsection (c) discourages contact with a student-athlete by an individual who has not registered as an athlete agent. An agency contract resulting from that contract is void, not merely voidable.

SECTION 5. REGISTRATION AS ATHLETE AGENT; FORM; REQUIREMENTS.

(a) An applicant for registration shall submit an application for registration to the [Secretary of State] in a form prescribed by the [Secretary of State]. [An application filed under this section is a public record.] The application must be in the name of an individual and, except as otherwise provided in subsection (b), signed or otherwise authenticated by the applicant under penalty of perjury and state or contain:

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

(2) the name of the applicant's business or employer, if applicable;

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

(4) a description of the applicant's:

(A) formal training as an athlete agent;
(B) practical experience as an athlete agent; and
(C) educational background relating to the applicant's activities as
an athlete agent;

(5) the names and addresses of three individuals not related to the
applicant who are willing to serve as references;

(6) the name, sport, and last known team for each individual for whom the
applicant acted as an athlete agent during the five years next preceding the date of submission of
the application;

(7) the names and addresses of all persons who are:

(A) with respect to the athlete agent's business if it is not a
corporation, the partners, members, officers, managers, associates, or profit-sharers of the
business; and

(B) with respect to a corporation employing the athlete agent, the
officers, directors, and any shareholder of the corporation having an interest of five percent or
greater;

(8) whether the applicant or any person named pursuant to paragraph (7)
has been convicted of a crime that, if committed in this State, would be a crime involving moral
turpitude or a felony, and identify the crime;

(9) whether there has been any administrative or judicial determination
that the applicant or any person named pursuant to paragraph (7) has made a false, misleading,
deceptive, or fraudulent representation;

(10) any instance in which the conduct of the applicant or any person

named pursuant to paragraph (7) resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or educational institution;

(11) any sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to paragraph (7) arising out of occupational or professional conduct; and

(12) whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any person named pursuant to paragraph (7) as an athlete agent in any State.

(b) An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another State, may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to subsection (a). The [Secretary of State] shall accept the application and the certificate from the other State as an application for registration in this State if the application to the other State:

(1) was submitted in the other State within six months next preceding the submission of the application in this State and the applicant certifies that the information contained in the application is current;

(2) contains information substantially similar to or more comprehensive than that required in an application submitted in this State; and

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

Comment

Most of the requirements for disclosure in an application for registration found in subsection (a) are similar to requirements imposed by existing acts. Subsection (a)(6) is not intended to cause an athlete agent who is also an attorney to violate the attorney-client privilege. If an attorney's role is limited to providing legal services to a student-athlete, the attorney is not required to register as an athlete agent or comply with this act. An attorney's actions as an athlete agent, however, are outside the scope of legal services, there is no privilege and the attorney must comply with this act.

It is the intent of this section to require that records concerning registration of athletes be open to the public. The provision in subsection (a) about an application being a public record is bracketed because it is not necessary in states which have other applicable law causing the records to be open to the public.

Subsection (b) provides for reciprocal use of applications in states which have adopted the uniform act. The need for an agent to comply with substantially different application procedures in multiple jurisdictions is eliminated. It is the first of a number of reciprocity provisions found in the act which are intended to ease the burden placed on agents by substantially different registration requirements and to simplify enforcement of the act. Absence of reciprocity provisions in existing acts is a primary reason why the uniform act is needed.

SECTION 6. CERTIFICATE OF REGISTRATION; ISSUANCE OR DENIAL;

RENEWAL.

(a) Except as otherwise provided in subsection (b), the [Secretary of State] shall issue a certificate of registration to an individual who complies with Section 5(a) or whose application has been accepted under Section 5(b).

(b) The [Secretary of State] may refuse to issue a certificate of registration if the [Secretary of State] determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the [Secretary of State] may consider whether the applicant has:

- (1) been convicted of a crime that, if committed in this State, would be a

crime involving moral turpitude or a felony;

*in criminal code
refers to moral turpitude*

- (2) made a materially false, misleading, deceptive, or fraudulent representation in the application or as an athlete agent;
- (3) engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;
- (4) engaged in conduct prohibited by Section 14;
- (5) had a registration or licensure as an athlete agent suspended, revoked, or denied or been refused renewal of registration or licensure as an athlete agent in any State;
- (6) engaged in conduct the consequence of which was that a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event was imposed on a student-athlete or educational institution; or
- (7) engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty, or integrity.

(c) In making a determination under subsection (b), the [Secretary of State] shall consider:

- (1) how recently the conduct occurred;
- (2) the nature of the conduct and the context in which it occurred; and
- (3) any other relevant conduct of the applicant.

(d) An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the [Secretary of State]. [An application filed under this section is a public record.] The application for renewal must be signed by the applicant under penalty of perjury and must contain current information on all matters required in an original registration.

(e) An individual who has submitted an application for renewal of registration or licensure in another State, in lieu of submitting an application for renewal in the form prescribed pursuant to subsection (d), may file a copy of the application for renewal and a valid certificate of registration or licensure from the other State. The [Secretary of State] shall accept the application for renewal from the other State as an application for renewal in this State if the application to the other State:

(1) was submitted in the other State within six months next preceding the filing in this State and the applicant certifies the information contained in the application for renewal is current;

(2) contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this State; and

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

(f) A certificate of registration or a renewal of a registration is valid for [two] years.

Comment

This section includes many of the factors which are considered in determining whether to register athlete agents under existing legislation. In addition, the Secretary of State is authorized to consider action taken in another state, which has adopted the uniform act, regarding registration or licensure.

A requirement that Secretaries of State exchange information about denial, suspension, revocation or refusal to renew registration of athlete agents is beyond the scope of this act. Since an agreement to exchange such information would reduce the expense of administering this act and provide for more effective enforcement, it seems likely the Secretaries of State will enter into such an agreement.

**SECTION 7. SUSPENSION, REVOCATION, OR REFUSAL TO RENEW
REGISTRATION.**

[(a)] The [Secretary of State] may suspend, revoke, or refuse to renew a registration for conduct that would have justified denial of registration under Section 6(b).

[(b)] The [Secretary of State] may deny, suspend, revoke, or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing. The [Administrative Procedures Act] applies to this [Act].]

Comment

By reference to Section 6(b), this section permits the Secretary of State to consider, among other things, actions in another state to suspend, revoke, or refuse to renew registration.

“Administrative Procedures Act” is bracketed because some states may refer to laws relating to due process in administrative procedures by another name.

SECTION 8. TEMPORARY REGISTRATION. The [Secretary of State] may issue a temporary certificate of registration while an application for registration or renewal of registration is pending.

Comment

The discretion to issue a temporary certificate of registration is broad enough to include issuance of such a certificate even where the registration may be contested. It is not necessary to issue a temporary certificate to protect an individual with whom a student-athlete initiated communications. Under Section 4(b), that individual is only required to file an application for registration within seven days after commencement of efforts to recruit or solicit the student-athlete to sign an agency contract.

SECTION 9. REGISTRATION AND RENEWAL FEES. An application for registration or renewal of registration must be accompanied by a fee in the following amount:

- (1) [\$] for an initial application for registration;
- (2) [\$] for an application for registration based upon a certificate of registration or licensure issued by another State;
- (3) [\$] for an application for renewal of registration; or
- (4) [\$] for an application for renewal of registration based upon an application for renewal of registration or licensure submitted in another State.

Comment

The amount of fees is left for each state to determine. Some states with existing acts have set fees in amounts sufficient to recover the cost of administration. If that approach is taken, a fee for registration or renewal based on registration or renewal of registration in another state should be less than when a complete evaluation and review of an application is necessary.

Athlete agent registration is the cornerstone of this act. High registration fees imposed by some states with existing acts have probably contributed to seemingly small numbers of registrants under existing acts. The success of this act may be contingent on the implementation of a reasonable fee structure which does not motivate non-compliance.

SECTION 10. REQUIRED FORM OF CONTRACT.

(a) An agency contract must be in a record, signed or otherwise authenticated by the parties.

(b) An agency contract must state or contain:

(1) the amount and method of calculating the consideration to be paid by the student-athlete for services to be provided by the athlete agent under the contract and any other consideration the athlete agent has received or will receive from any other source for entering into the contract or for providing the services;

(2) the name of any person not listed in the application for registration or renewal of registration who will be compensated because the student-athlete signed the agency contract;

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

(4) a description of the services to be provided to the student-athlete;

(5) the duration of the contract; and

(6) the date of execution.

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

WARNING TO STUDENT-ATHLETE

IF YOU SIGN THIS CONTRACT:

(1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT-ATHLETE IN YOUR SPORT;

(2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND

(3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.

(d) An agency contract that does not conform to this section is voidable by the student-athlete. If a student-athlete voids an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the

athlete agent to induce the student-athlete to enter into the contract.

(e) The athlete agent shall give a record of the signed or otherwise authenticated agency contract to the student-athlete at the time of execution.

Comment

This section is intended to provide protection to the student-athlete by requiring a form of agency contract similar to those required in some consumer transactions. The drafting committee preferred to require that agency contracts be in traditional written form. However, the adoption of the Electronic Signatures in Global and National Commerce Act (see Section 19) eliminated that option.

A student-athlete who opts to void an agency contract under this section because it does not comply with the specified form is not required to return any consideration received to induce the signing of the agency contract because such inducement is prohibited conduct under Section 14.

The compensation referred to in subsection (b)(2) is compensation for services intended to induce the student-athlete to sign an agency contract. It does not include compensation individuals may receive because an athlete agent has been successful in securing an agency contract. For example, the compensation paid employees of an athlete agent who did not participate in inducing the student-athlete to sign an agency contract is not compensation under subsection (b)(2) even though their compensation may be made possible by the income resulting from the agency contract.

Subsection (b) contains references to a student-athlete in a time context in which the individual may be a former student-athlete. This is done for simplicity in drafting. It should be noted that violation of eligibility rules adopted by an educational institution or a national association is not automatic and does not occur until a determination has been made by the educational institution or the national association

SECTION 11. NOTICE TO EDUCATIONAL INSTITUTION.

(a) Within 72 hours after entering into an agency contract or before the next scheduled athletic event in which the student-athlete may participate, whichever occurs first, the athlete agent shall give notice in a record of the existence of the contract to the athletic director of the educational institution at which the student-athlete is enrolled or the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.

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

Comment

The purpose of this section is to prevent an educational institution from being sanctioned or penalized by allowing an ineligible player to participate in intercollegiate sports. The penalties may be severe. In addition to non-monetary penalties mentioned in the prefatory note, penalties may include loss of very substantial revenues received for participation in a football bowl game or a post-season basketball tournament.

SECTION 12. STUDENT-ATHLETE'S RIGHT TO CANCEL.

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

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

(c) If a student-athlete cancels an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

Comment

Because of the disparity in the sophistication of the parties, this section gives the student-athlete or former student-athlete the right to cancel an agency contract within 14 days even if the athlete agent has complied with the provisions of Section 10 regarding the form of the contract. The section provides relief to the student-athlete who has entered into an ill-considered agency contract, but does not provide any assurance that the student-athlete will be eligible to compete in a sport.

SECTION 13. REQUIRED RECORDS.

(a) An athlete agent shall retain the following records for a period of five years:

- (1) the name and address of each individual represented by the athlete agent;
- (2) any agency contract entered into by the athlete agent; and
- (3) any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract.

(b) Records required by subsection (a) to be retained are open to inspection by the [Secretary of State] during normal business hours.

SECTION 14. PROHIBITED CONDUCT.

(a) An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, may not:

- (1) give any materially false or misleading information or make a materially false promise or representation;
- (2) furnish anything of value to a student-athlete before the student-athlete enters into the agency contract; or
- (3) furnish anything of value to any individual other than the student-athlete or another registered athlete agent.

(b) An athlete agent may not intentionally:

- (1) initiate contact with a student-athlete unless registered under this [Act];
- (2) refuse or fail to retain or permit inspection of the records required to be retained by Section 13;
- (3) fail to register when required by Section 4;

(4) provide materially false or misleading information in an application for registration or renewal of registration;

(5) predate or postdate an agency contract; or

(6) fail to notify a student-athlete before the student-athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate as a student-athlete in that sport.

Comment

This section describes the conduct which gives rise to criminal penalties and civil liabilities under Sections 15 and 16.

Subsection (a)(3) prohibits an athlete agent from making any payment or providing anything of value to an individual who is in a position to influence a student-athlete to enter into an agency contract unless that individual is registered as an athlete agent. There have been numerous instances in which an athlete agent has made payment to or provided something of value to family members, friends or roommates of student-athletes to enlist their services in inducing a student-athlete to sign an agency contract usually without disclosure to the student-athlete.

If a student-athlete signs an agency contract in the form required by Section 10, there is no failure to notify under subsection (b)(6) because the agency contract includes the warning to student-athlete required by Section 10(c).

SECTION 15. CRIMINAL PENALTIES. An athlete agent who violates Section 14 is guilty of a [misdemeanor] [felony] and, upon conviction, is punishable by [].

Comment

The extent of the criminal penalties which may be imposed for violation of the act are left to the states adopting the act because of a wide variation in the criminal penalties provided for by existing acts. Variations in the criminal penalties which may be imposed would not detract from the otherwise uniform and reciprocal provisions of the act. Some potential criminal penalty is necessary to discourage those individuals who are willing to engage in improper or illegal conduct because of the size of the monetary stakes in the contemporary professional sports world.

SECTION 16. CIVIL REMEDIES.

(a) An educational institution ~~has a right of action~~ ^{may bring an} against an athlete agent or a former student-athlete for damages caused by a violation of this ^{Section} [Act]. In an action under this section, the court may award to the prevailing party costs ^{notwithstanding S. 817.04} and reasonable attorney's fees.

(b) Damages ~~of an educational institution~~ under subsection (a) include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student-athlete, the educational institution was injured by a violation of this [Act] or was penalized, disqualified, or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by reasonable self-imposed disciplinary action taken to mitigate sanctions likely to be imposed by such an organization.

(c) A right of action under this section does not accrue until the educational institution discovers or by the exercise of reasonable diligence would have discovered the violation by the athlete agent or former student-athlete.

(d) Any liability of the athlete agent or the former student-athlete under this section is several and not joint.

?? (e) This [Act] does not restrict rights, remedies, or defenses of any person under law or equity.

Comment

It is assumed that educational institutions will be very reluctant to bring an action against a former student-athlete. Public opinion and the desire to be successful in future recruiting of athletes should cause educational institutions to carefully consider whether to exercise the right established by subsection (a) in most situations. There are, however, known instances of extremely egregious conduct by student-athletes who received lucrative professional contracts which caused serious damage to educational institutions. Subsection (a) keeps open the possibility of a civil action against those individuals.

Section 16 does not specifically authorize an action by a student-athlete against an athlete agent because the student-athlete can bring an action against an athlete agent under existing law. Subsection (e) preserves the rights of the student-athlete under existing law.

SECTION 17. ADMINISTRATIVE PENALTY. The [Secretary of State] may assess a civil penalty against an athlete agent not to exceed [\$25,000] for a violation of this [Act].

Comment

The procedure for imposing an administrative penalty and complying with due process requirements are left to the adopting state's administrative procedures law.

SECTION 18. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.

SECTION 19. ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. The provisions of this [Act] governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000), and supersede, modify, and limit the Electronic Signatures in Global and National Commerce Act.

Comment

The Electronic Signatures in Global and National Commerce Act (ESGNCA) contains provisions governing the legal effect, validity, or enforceability of electronic records and electronic signatures. The act recognizes contracts which have been formed with the use of electronic records or electronic signatures even though the drafting committee recommends that agency contracts be in the traditional written form.

SECTION 20. SEVERABILITY. If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

SECTION 21. REPEALS. The following acts and parts of acts are hereby repealed:

SECTION 22. EFFECTIVE DATE. This [Act] takes effect _____.



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-3241/P1

MDK:...

King

D-NOTE

Tomorrow,
5/11,
by 4:00pm

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT ^{Gen. Cat.}; relating to: regulating athlete agents, granting rule-making
2 authority, making an appropriation, and providing ~~a~~ penalty. ^{ies}

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.
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. 20.115 (1) (jk) [✓] of the statutes is created to read:
4 20.115 (1) (jk) *Athlete agent regulation.* All moneys received from athlete agent
5 registration and renewal fees under the rules promulgated under s. 100.179 (8) [✓] for
6 the regulation of athlete agents under s. 100.179.

****NOTE: The appropriation paragraph is necessary to allow DATCP to spend the money ^{that} it receives in fees.

7 SECTION 2. 93.135 (1) (rp) [✓] of the statutes is created to read:

****NOTE: The above language includes athlete agent registrations with the other licenses and registrations that may be denied, suspended, or restricted on the basis of the registrant's failure to pay child or family support.

Ins. 1-7 [fr. p. 2]

11-7

1 93.135 (1) (rp) A registration as an athlete agent under s. 100.179.

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

3 **100.179 Uniform athlete agents act.** (1) DEFINITIONS. In this section:

4 (a) "Agency contract" means an agreement in which a student athlete
5 authorizes a person to negotiate or solicit on behalf of the student athlete a
6 professional-sports-services contract or an endorsement contract.

7 (b) "Athlete agent" means an individual who enters into an agency contract
8 with a student athlete or, directly or indirectly, recruits or solicits a student athlete
9 to enter into an agency contract. "Athlete agent" includes an individual who
10 represents to the public that the individual is an athlete agent. "Athlete agent" does
11 not include a spouse, parent, sibling, grandparent, or guardian of the student athlete
12 or an individual acting solely on behalf of a professional sports team or professional
13 sports organization.

14 (c) "Athletic director" means an individual responsible for administering the
15 overall athletic program of an educational institution or, if an educational institution
16 has separately administered athletic programs for male students and female
17 students, the athletic program for males or the athletic program for females, as
18 appropriate.

19 (d) "Contact" means a communication, direct or indirect, between an athlete
20 agent and a student athlete, to recruit or solicit the student athlete to enter into an
21 agency contract.

22 (e) "Endorsement contract" means an agreement under which a student athlete
23 is employed or receives consideration to use on behalf of the other party any value
24 that the student athlete may have because of publicity, reputation, following, or fame
25 obtained because of athletic ability or performance.

1 (f) "Intercollegiate sport" means a sport played at the collegiate level for which
2 eligibility requirements for participation by a student athlete are established by a
3 national association for the promotion or regulation of collegiate athletics.

****NOTE: The uniform act includes a definition for "person" which is defined as "an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity." However, under Wisconsin law, "person" is broadly defined to include "all partnerships, associations and bodies politic or corporate." See s. 990.01 (26), stats. Therefore, it is not necessary to define "person" for purposes of the act.

4 (g) "Professional-sports-services contract" means an agreement under which
5 an individual is employed, or agrees to render services, as a player on a professional
6 sports team, with a professional sports organization, or as a professional athlete.

7 (h) "Record" means information that is inscribed on a tangible medium or that
8 is stored in an electronic or other medium and is retrievable in perceivable form.

9 (i) "Registration" means registration as an athlete agent under this section.

10 (j) "State" means a state of the United States, the District of Columbia, Puerto
11 Rico, the United States Virgin Islands, or any territory or insular possession subject
12 to the jurisdiction of the United States.

13 (k) "Student athlete" means an individual who engages in, is eligible to engage
14 in, or may be eligible in the future to engage in, any intercollegiate sport. If an
15 individual is permanently ineligible to participate in a particular intercollegiate
16 sport, the individual is not a student athlete for purposes of that sport.

****NOTE: The uniform act uses the hyphenated term "student-athlete". However, under our drafting style, hyphens are only used with compound adjectives that precede a noun. The noun itself is not hyphenated. Therefore, it is inconsistent with our drafting style to use "student-athlete". In contrast, "professional-sports-services contract" is consistent because the three words preceding the noun "contract" are used as adjectives.

17 (2) SERVICE OF PROCESS. By acting as an athlete agent in this state, a
18 nonresident individual appoints the secretary of state as the individual's agent for

1 service of process in any civil action in this state related to the individual's acting as
2 an athlete agent in this state.

✓
****NOTE: Even though DATCP enforces the act's requirements, it is consistent with Wisconsin law to require appointment of the secretary of state as the agent for service of process.

✓
****NOTE: The uniform act includes optional language regarding the issuance of subpoenas. The optional language is not necessary because, under s. 93.14 (1), stats., DATCP "may, in relation to any matter within [DATCP's] power, conduct hearings, administer oaths, issue subpoenas and take testimony?"

3 (3) ATHLETE AGENTS: REGISTRATION REQUIRED; VOID CONTRACTS. (a) Except as
4 otherwise provided in ~~paragraph~~^{par.} (b), an individual may not act as an athlete agent
5 in this state without holding a certificate of registration under sub. (5) or (7).

6 (b) Before being issued a certificate of registration, an individual may act as an
7 athlete agent in this state for all purposes except signing an agency contract, if all
8 of the following are satisfied:

****NOTE: Under our drafting style, the introduction to a list specifies whether all or any of the items in the list are applicable. Therefore, the above language uses "if all of the following are satisfied" rather than simply "if". In addition, each item in a list is punctuated with a period, rather than a semicolon. Similar changes to the uniform act are made throughout this bill and, for the most part, are not pointed out in NOTES.

9 1. A student athlete or another person acting on behalf of the student athlete
10 initiates communication with the individual.

11 2. Within ~~seven~~⁷ days after an initial act as an athlete agent, the individual
12 submits an application for registration as an athlete agent in this state.

13 (c) An agency contract resulting from conduct in violation of this subsection is
14 void and the athlete agent shall return any consideration received under the
15 contract.

16 (4) REGISTRATION AS ATHLETE AGENT; FORM; REQUIREMENTS. (a) An applicant for
17 registration ~~shall~~^{as an athlete agent} submit an application for registration to the department in a form
18 prescribed by the department. The application must be in the name of an individual

1 and, except as otherwise provided in ^{par.} ~~paragraph~~ (b), signed or otherwise
2 authenticated by the applicant under penalty of perjury and state or contain all of
3 the following:

****NOTE: The uniform act has optional language specifying that an application is a public record. This language is not necessary under Wisconsin law because, unless a statute provides otherwise, a record relating to official functions of a state agency is a public record. However, under Wisconsin law, to guarantee public access to a public record, a statute must also specify that the record is open to inspection. If a statute doesn't specify that a record is open to inspection, the custodian of the record may withhold access to the record if the custodian demonstrates that the strong public interest in providing access is outweighed by the public interest in withholding access. A custodian does not have the opportunity to make such a demonstration if the statute provides that a record is open to inspection. Therefore, ~~paragraph~~ (c) below includes language specifying that applications are open to inspection.

As an athlete agent is added to the first sentence to state what one is registering as; another option is to use "for registration under this section"

- 4 1. The name of the applicant and the address of the applicant's principal place
5 of business.
- 6 2. The name of the applicant's business or employer, if applicable.
- 7 3. Any business or occupation engaged in by the applicant for the ⁵ ~~the~~ years next
8 preceding the date of submission of the application.
- 9 4. A description of all of the following:
 - 10 a. The applicant's formal training as an athlete agent.
 - 11 b. The applicant's practical experience as an athlete agent.
 - 12 c. The applicant's educational background relating to his or her activities as an
13 athlete agent.
 - 14 5. The names and addresses of ³ ~~the~~ individuals not related to the applicant
15 who are willing to serve as references.
 - 16 6. The name, sport, and last known team for each individual for whom the
17 applicant acted as an athlete agent during the ⁵ ~~the~~ years next preceding the date of
18 submission of the application.

1 7. If the athlete agent's business is not a corporation, the names and addresses
 2 of the partners, members, officers, managers, associates, or profit sharers of the
 3 business. (A)

****NOTE: The structure of subds. 7. and 8. conforms to our drafting style and differs from the uniform act.

4 8. If the athlete agent is employed by a corporation, the names and addresses
 5 of the officers and directors of the corporation and any shareholder of the corporation
 6 having an interest of 5% or more.

7 9. Whether the applicant or any person named ~~pursuant~~ ^{stet} subd. 7. or 8. has
 8 been convicted of a crime that, if committed in this state, would be a felony, and a
 9 description of the crime.

****NOTE: The bill requires "a description of the crime" because that phrase is consistent with the introductory language of proposed s. 100.179 (4) (a) (intro.) The uniform act's use of "identify the crime" is not consistent with that introductory language.

****NOTE: The uniform act also refers to a "crime of moral turpitude". This reference has no relevance under the Wisconsin statutes, which do not describe crimes in this manner. Moreover, the Wisconsin Supreme Court has concluded that "in Wisconsin all crimes involve moral turpitude" *Starobin v. Northridge Lakes Development Co.*, 94 Wis. 2d 1, 15 (1980). If all crimes involve moral turpitude, then moral turpitude is not a useful standard. Therefore, I did not include the reference in this bill. As a result, conviction of a felony is relevant, but conviction of a misdemeanor is not. Depending on the intent of the uniform act, exclusion of misdemeanors may be inconsistent with that intent. Because I don't know what is intended by "moral turpitude" and because that phrase is not a useful standard under Wisconsin law, I don't know whether the bill is inconsistent with the uniform act.

10 ^{9m.} Whether there has been any administrative or judicial determination that
 11 the applicant or any person named [✓] pursuant to subd. 7. or 8. has made a false,
 12 misleading, deceptive, or fraudulent representation.

13 10. Any instance in which the conduct of the applicant or any person named
 14 pursuant to subd. 7. or 8. resulted in the imposition of a sanction, suspension, or
 15 declaration of ineligibility to participate in an interscholastic or intercollegiate
 16 athletic event ^{stet} on a student athlete or educational institution.

~~UPON~~

1 11. Any sanction, suspension, or disciplinary action taken against the
2 applicant or any person named pursuant to subd. 7. or 8. arising out of occupational
3 or professional conduct.

4 12. Whether there has been any denial of an application for, suspension or
5 revocation of, or refusal to renew, the registration or licensure of the applicant or any
6 person named pursuant to subd. 7. or 8. as an athlete agent in any state.

7 (b) An individual who has submitted an application for, and holds a certificate
8 of, registration or licensure as an athlete agent in another state, may submit a copy
9 of the application and certificate in lieu of submitting an application in the form
10 prescribed pursuant to ^{par.} ~~paragraph~~ (a). The department shall accept the application
11 and the certificate from the other state as an application for registration in this state
12 if all of the following are satisfied:

13 1. The application to the other state was submitted in the other state within
14 ~~six~~^{six} months next preceding the submission of the application in this state and the
15 applicant certifies that the information contained in the application to the other
16 state is current.

****NOTE: The language of par. (b) 1. to 3. differs from the uniform act because I had
to make it conform to our style regarding introductions to lists. See the NOTE following
sub. (3) (b) (intro.).

17 2. The application to the other state contains information substantially similar
18 to or more comprehensive than that required in an application submitted in this
19 state.

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

22 (c) Applications submitted under this subsection shall be open to inspection at
23 all reasonable hours authorized by representatives of the department.

***NOTE: See the NOTE following paragraph (a) (intro.) above.

1 (5) CERTIFICATE OF REGISTRATION; ISSUANCE OR DENIAL; RENEWAL. (a) Except as
2 otherwise provided in par. (b), the department shall issue a certificate of registration
3 to an individual who complies with sub. (4) (a) or whose application has been
4 accepted under sub. (4) (b).

5 (b) The department may refuse to issue a certificate of registration if the
6 department determines that the applicant has engaged in conduct that has a
7 significant adverse effect on the applicant's fitness to act as an athlete agent. In
8 making the determination, the department may consider whether the applicant has
9 done any of the following:

10 1. Notwithstanding ss. 111.321, 111.322, and 111.335, been convicted of a crime
11 that, if committed in this state, would be a felony.

✓
****NOTE: The uniform act also refers to a "crime of moral turpitude". See the
discussion in the NOTE following sub. (4) (a) 9. above.

✓
****NOTE: The "notwithstanding" phrase is necessary because, under Wisconsin's
employment discrimination law, a state agency may consider conviction of a crime as a
basis for denying a license, etc., only if the circumstances of the conviction are
substantially related to the activity for which the license is issued. See ss. 111.321,
111.322, and 111.335, stats. However, to be consistent with the uniform act, this bill
allows DATCP to deny registration based on a conviction for any felony, even a conviction
that does not have a substantial relationship to the activities of an athlete agent. The
"notwithstanding" phrase overrides the employment discrimination prohibition that
would otherwise apply to DATCP. You should be aware that, by allowing denial of
registration based on a conviction that is not related to acting as an athlete agent, the
bill could be subject to an attack that it violates the due process clause of the state and
federal constitutions. Although I haven't thoroughly researched the issue, I understand
that the court decisions go either way on the issue, and that there is no consensus.

12 2. Made a materially false, misleading, deceptive, or fraudulent representation
13 in the application or as an athlete agent.

14 3. Engaged in conduct that would disqualify the applicant from serving in a
15 fiduciary capacity.

16 4. Engaged in conduct prohibited by sub. (13).

1 5. Had a registration or licensure as an athlete agent suspended, revoked, or
2 denied or been refused renewal of registration or licensure as an athlete agent in any
3 state.

4 6. Engaged in conduct the consequence of which was that a sanction,
5 suspension, or declaration of ineligibility to participate in an interscholastic or
6 intercollegiate athletic event was imposed on a student athlete or educational
7 institution.

8 7. Engaged in conduct that significantly adversely reflects on the applicant's
9 credibility, honesty, or integrity.

10 (c) In making a determination under ~~paragraph~~ ^{par.} (b), the department shall
11 consider each of the following:

- 12 1. How recently the conduct occurred.
- 13 2. The nature of the conduct and the context in which it occurred.
- 14 3. Any other relevant conduct of the applicant.

15 (d) An athlete agent may apply to renew a registration by submitting an
16 application for renewal in a form prescribed by the department. The application for
17 renewal must be signed by the applicant under penalty of perjury and must contain
18 current information on all matters required in an original registration. Applications
19 submitted under this paragraph shall be open to inspection at all reasonable hours
20 authorized by representatives of the department.

****NOTE: The last sentence in par. (d) is not included in the uniform act. See the
explanation in the NOTE following sub. (4) (a) (intro.) above.

21 (e) An individual who has submitted an application for renewal of registration
22 or licensure in another state, in lieu of submitting an application for renewal in the
23 form prescribed pursuant to paragraph (d), may file a copy of the application for

under par.

1 renewal and a valid certificate of registration or licensure from the other state. The
 2 department shall accept the application for renewal from the other state as an
 3 application for renewal in this state if the application to the other state satisfies all
 4 of the following:

5 1. The application ^{to the other state} was submitted in the other state within ⁶ ~~six~~ months next
 6 preceding the filing in this state and the applicant certifies ^{that} the information
 7 contained in the application for renewal is current.

8 2. The application contains information substantially similar to or more
 9 comprehensive than that required in an application for renewal submitted in this
 10 state.

11 3. The application [✓] was signed by the applicant under penalty of perjury.

12 (f) A certificate of registration or a renewal of a registration is valid for 2 years.

13 **(6) SUSPENSION, REVOCATION, OR REFUSAL TO RENEW REGISTRATION.**

14 (a) The department may suspend, revoke, or refuse to renew a registration for
 15 conduct that would have justified denial of registration under sub. (5) (b). [✓]

16 (b) The department may deny, suspend, revoke, or refuse to renew a certificate
 17 of registration or licensure only after proper notice and an opportunity for a hearing.

****NOTE: The uniform act also includes a sentence that "The [Administrative
 Procedures Act] applies to this [Act]". This sentence is not necessary because, under s.
 227.51 (1), stats., the relevant provisions of this state's administrative procedure act (i.e.,
 subch. III of ch. 227, stats.) apply whenever the grant, denial, or renewal of a license
 (which includes a registration under this bill) is preceded by notice and opportunity for ^a
 hearing.

18 **(7) TEMPORARY REGISTRATION.** The department may issue a temporary
 19 certificate of registration while an application for registration or renewal of
 20 registration is pending.

1 (8) REGISTRATION AND RENEWAL FEES. An application for registration or renewal
2 of registration must be accompanied by a fee in an amount specified in rules
3 promulgated by the department.

****NOTE: Unless you know the amount that is ^{set the fees} appropriate for the fees, I recommend requiring DATCP to promulgate rules that ~~do so~~. This approach is consistent with the comment to the uniform act, which provides that "[t]he amount of the fees is left for each state to determine?"

4 (9) REQUIRED FORM OF CONTRACT. (a) An agency contract must be in a record,
5 signed or otherwise authenticated by the parties.

6 (b) An agency contract must state or contain all of the following:

7 1. The amount and method of calculating the consideration to be paid by the
8 student athlete for services to be provided by the athlete agent under the contract
9 and any other consideration ^{that} the athlete agent has received or will receive from any
10 other source for entering into the contract or for providing the services.

11 2. The name of any person not listed in the application for registration or
12 renewal of registration who will be compensated because the student athlete signed
13 the agency contract.

14 3. A description of any expenses that the student athlete agrees to reimburse.

15 4. A description of the services to be provided to the student athlete.

16 5. The duration of the contract.

17 6. The date of execution.

18 (c) An agency contract must contain, in close proximity to the signature of the
19 student athlete, a conspicuous notice in boldface type ^{and} capital letters stating the
20 following:

WARNING TO STUDENT ATHLETE

← IF YOU SIGN THIS CONTRACT:

*Flush Left:
O.O initial indent*

LPS: Change props to not allow a

break after these 2 lines [21 & 22]

LPS: Change initial indent to "O" on lines 21 and 22.

1 (1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT
2 ATHLETE IN YOUR SPORT;

3 (2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER
4 ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT
5 MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND

6 (3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER
7 SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE
8 YOUR ELIGIBILITY.

9 ****NOTE: This form has been slightly reformatted to conform to our drafting style.*

(d) An agency contract that does not conform to this subsection is voidable by
10 the student athlete. If a student athlete voids an agency contract, the student athlete
11 is not required to pay any consideration under the contract or to return any
12 consideration received from the athlete agent to induce the student athlete to enter
13 into the contract.

(e) The athlete agent shall give a record of the signed or otherwise
15 authenticated agency contract to the student athlete at the time of execution.

(10) NOTICE TO EDUCATIONAL INSTITUTION. (a) Within 72 hours after entering
17 into an agency contract or before the next scheduled athletic event in which the
18 student athlete may participate, whichever occurs first, the athlete agent shall give
19 notice in a record of the existence of the contract to the athletic director of the
20 educational institution at which the student athlete is enrolled or the athlete agent
21 has reasonable grounds to believe the student athlete intends to enroll.

(b) Within 72 hours after entering into an agency contract or before the next
23 athletic event in which the student athlete may participate, whichever occurs first,
24 the student athlete shall inform the athletic director of the educational institution

1 at which the student athlete is enrolled that he or she has entered into an agency
2 contract.

3 (11) STUDENT ATHLETE'S RIGHT TO CANCEL. (a) A student athlete may cancel an
4 agency contract by giving notice of the cancellation to the athlete agent in a record
5 within 14 days after the contract is signed.

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

7 (c) If a student athlete cancels an agency contract, the student athlete is not
8 required to pay any consideration under the contract or to return any consideration
9 received from the athlete agent to induce the student athlete to enter into the
10 contract.

11 (12) REQUIRED RECORDS. (a) An athlete agent shall retain all of the following
12 records for a period of ~~three~~⁵ years:

- 13 1. The name and address of each individual represented by the athlete agent.
- 14 2. Any agency contract entered into by the athlete agent.
- 15 3. Any direct costs incurred by the athlete agent in the recruitment or
- 16 solicitation of a student athlete to enter into an agency contract.

17 (b) Records required by par. (a) to be retained are open to inspection by the
18 department during normal business hours.

19 (13) PROHIBITED CONDUCT. (a) An athlete agent, with the intent to induce a
20 student athlete to enter into an agency contract, may not do any of the following:

21 1. Give any materially false or misleading information or make a materially
22 false promise or representation.

23 2. Furnish anything of value to a student athlete before the student athlete
24 enters into the agency contract.

1 3. Furnish anything of value to any individual other than the student athlete
2 or another registered athlete agent.

3 (b) An athlete agent may not intentionally do any of the following:

4 1. Initiate contact with a student athlete unless registered under this section.

5 2. Refuse or fail to retain or permit inspection of the records required to be
6 retained by sub. (12).

7 3. Fail to register when required by sub. (3).

8 4. Provide materially false or misleading information in an application for
9 registration or renewal of registration.

10 5. Predate or postdate an agency contract.

11 6. Fail to notify a student athlete before the student athlete signs or otherwise
12 authenticates an agency contract for a particular sport that the signing or
13 authentication may make the student athlete ineligible to participate as a student
14 athlete in that sport.

15 (14) CRIMINAL PENALTIES. An athlete agent who violates sub. (13) may be fined
16 not more than \$10,000 or imprisoned for not more than 9 months or both.

 ***NOTE: This language is different than the uniform act, but is consistent with
the way in which penalties are expressed for violations of Wisconsin law. Also, I wasn't
sure about the amount of the fine or the length of imprisonment. Please let me know
whether you want to revise the penalties. Note that there is no standard penalty for
violation of other professional licensing statutes. Instead, the penalties vary, depending
on the license.

17 (15) CIVIL REMEDIES. (a) An educational institution may bring an action against
18 an athlete agent or a former student athlete for damages caused by a violation of this
19 section. In an action under this paragraph, the court may award to the prevailing
20 party costs and, notwithstanding s. 814.04, reasonable attorney's fees.

 ***NOTE: The above language differs slightly from the uniform act because, under
our drafting style, we state that a person may bring an action, rather than a person has

a right of action. Also, the "notwithstanding" language is necessary for a court to award attorney's fees.

1 (b) Damages of an educational institution under par. (a) include losses and
2 expenses incurred because, as a result of the conduct of an athlete agent or former
3 student athlete, the educational institution was injured by a violation of this section
4 or was penalized, disqualified, or suspended from participation in athletics by a
5 national association for the promotion and regulation of athletics, by an athletic
6 conference, or by reasonable self-imposed disciplinary action taken to mitigate
7 sanctions likely to be imposed by such an organization.

8 (c) A right of action under this subsection does not accrue until the educational
9 institution discovers or by the exercise of reasonable diligence would have discovered
10 the violation by the athlete agent or former student athlete.

11 (d) Any liability of the athlete agent or the former student athlete under this
12 section is several and not joint.

13 (e) This section does not restrict rights, remedies, or defenses of any person
14 under law or equity.

15 (16) ADMINISTRATIVE ~~PENALTY~~ ^{FORFEITURE}. The department may directly assess a forfeiture
16 against an athlete agent of ~~no~~ ^{not} more than \$25,000 for a violation of this section.

***NOTE: The above language differs slightly from the uniform act but is consistent with our drafting style.

17 (17) UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing
18 this section, consideration must be given to the need to promote uniformity of the law
19 with respect to its subject matter among the states that enact the Uniform Athlete
20 Agents Act.

21 (18) ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. The
22 provisions of this section governing the legal effect, validity, or enforceability of

1 electronic records or signatures, and of contracts formed or performed with the use
 2 of such records or signatures conform to the requirements of section 102 of the federal
 3 Electronic Signatures in Global and National Commerce Act, 15 USC 7002, and
 4 supersede, modify, and limit the federal Electronic Signatures in Global and
 5 National Commerce Act, 15 USC 7001 to 7031.

***NOTE: The references to the federal act conform to our drafting style and are different than the references in the uniform act.

***NOTE: I'm not sure what is intended to be accomplished in sub. (18). Under the federal Electronic Signatures in Global and National Commerce Act (federal act), a state may supersede, etc., the federal act only by: 1) actually adopting the federal act, which the uniform act and this bill don't do, or 2) specifying alternative procedures for the use or acceptance of electronic records and signatures, which the uniform act and this bill don't do. The uniform act and the bill require contracts and certain notices to be in a "record" which is defined as "information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form". However, the uniform act and the bill do not include any alternative procedures for using or accepting such a record. Instead, the uniform act and the bill require a contract to be signed "or otherwise authenticated" without specifying the procedures for accomplishing such authentication. Because the uniform act and the bill do not satisfy the conditions under federal law for superseding, etc., the federal act, the uniform act, and the bill cannot supersede, etc., the federal act, even though sub. (18) says that it does. The result is confusing and I recommend deleting sub. (18) from the bill.

SECTION 4: Nonstatutory provisions.

(1) If an athlete agent or student athlete is subject to a contract that is in effect on the effective date of this subsection and that contains provisions that are inconsistent with section 100.179, as created by this act, then, notwithstanding section 100.179, as created by this act, the athlete agent or student athlete may perform his or her obligations, and exercise his or her rights, under that contract until the contract expires, is extended, is modified, or is renewed, whichever occurs first.

***NOTE: The above language is not included in the uniform act, but may be necessary to save the bill from a challenge that the bill unconstitutionally impairs contracts that are already made when the bill goes into effect.

SECTION 5. Initial applicability.

(1) The treatment of section 100.179 (10) of the statutes first applies to contracts entered into on the effective date of this subsection.

***NOTE: The above language resolves potential ambiguity over when the requirement to provide notice to an educational institution first applies.

- 1 (2) The treatment of section 100.179 (15) (b) of the statutes first applies to losses
2 or expenses incurred on the effective date of this subsection.

***NOTE: The above language makes it clear that, no matter when an educational institution was penalized, etc., the educational institution may bring an action for damages that includes only those losses or expenses that are incurred after the bill goes into effect.

3 **SECTION 6. Effective date.**

- 4 (1) This act takes effect on the first day of the 7th month beginning after
5 publication.

***NOTE: I included a delayed effective date to give the department time to prepare for the registration of athlete agents. The delayed effective date also gives the person subject to the bill time to take steps to conform to the bill's requirements. The uniform act contains a provision for a delayed effective date without specifying the length of delay. Is the bill's delayed effective date okay?

6 (END)

who is

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3241/P1dn

MDK:fx..



Representative Wieckert:

This bill is prepared as a preliminary draft because, although it generally follows the language of the uniform act, some of the language is different and it includes some provisions that are not included in the uniform act. The differences are explained in the NOTES that are included in the draft. I thought that you, or the NCAA, might want to review these NOTES before the draft is finalized.

Also note that the uniform act contains a short title and a severability provision that are not included in the draft. Using a short title is inconsistent with our drafting style. As for the severability provision, it is not necessary because s. 990.001 (11), stats., provides that the unconstitutionality of any provision of the statutes 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. Therefore, we do not include severability provisions in bills.

If you have any questions, please give me a call.

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

Formal corrected to "centered"

WARNING TO STUDENT ATHLETE

5/11/2001
12:15 p.m.
KMG

IF YOU SIGN THIS CONTRACT:

1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT ATHLETE IN YOUR SPORT;

2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND

3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.

***NOTE: This form has been slightly reformatted to conform to our drafting style.

(d) An agency contract that does not conform to this subsection is voidable by the student athlete. If a student athlete voids an agency contract, the student athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student athlete to enter into the contract.

(e) The athlete agent shall give a record of the signed or otherwise authenticated agency contract to the student athlete at the time of execution.

(10) NOTICE TO EDUCATIONAL INSTITUTION. (a) Within 72 hours after entering into an agency contract or before the next scheduled athletic event in which the student athlete may participate, whichever occurs first, the athlete agent shall give notice in a record of the existence of the contract to the athletic director of the educational institution at which the student athlete is enrolled or the athlete agent has reasonable grounds to believe the student athlete intends to enroll.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3241/P1dn
MDK:kmg:jf

May 11, 2001

Representative Wieckert:

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Also note that the uniform act contains a short title and a severability provision that are not included in the draft. Using a short title is inconsistent with our drafting style. As for the severability provision, it is not necessary because s. 990.001 (11), stats., provides that the unconstitutionality of any provision of the statutes 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. Therefore, we do not include severability provisions in bills.

If you have any questions, please give me a call.

Mark D. Kunkel
Legislative Attorney
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E-mail: mark.kunkel@legis.state.wi.us