

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

## **Appointments**

03hr\_SC–HET\_Appt\_pt00

## **Committee Hearings**

03hr\_SC–HET\_CH\_pt00

## **Committee Reports**

03hr\_SC–HET\_CR\_pt00

## **Clearinghouse Rules**

03hr\_SC–HET\_CRule\_03–

## **Executive Sessions**

03hr\_SC–HET\_ES\_pt00

# **Hearing Records**

## **03hr\_ab0403**

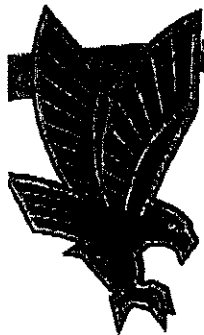
03hr\_sb0000

## **Misc.**

03hr\_SC–HET\_Misc\_pt00

## **Record of Committee Proceedings**

03hr\_SC–HET\_RCP\_pt00

**MARQUETTE  
UNIVERSITY***Department of Intercollegiate  
Athletics and Recreational Sports*1212 Bld., Suite 213  
P.O. Box 1881  
Milwaukee, WI 53201-1881  
414-288-7127  
Fax: 414-288-7341  
[www.gomarquette.com](http://www.gomarquette.com)

October 3, 2003

The Honorable Robin G. Kreibich  
State Capitol  
P.O. Box 8952  
Madison, Wisconsin 53708

Dear Representative Kreibich:

I am writing to you regarding 2003 Assembly Bill 403 which will be having a hearing in your Committee on Colleges and Universities on October 7<sup>th</sup>. On behalf of Marquette University, I am pleased to extend our support for Assembly Bill 403. We are grateful to Representative Wieckert and Senator Kanavas for introducing this legislation.

As you probably already know, Marquette University has a long history of participation in college athletics, including our successful and nationally recognized Men's and Women's basketball, Men's and Women's soccer, Men's golf, and Women's volleyball teams. Assembly Bill 403 is good, pro-active legislation. It allows students to concentrate on their higher education as well as their participation in athletics by protecting them from sports agents who may place less importance on their studies versus signing a contract that will provide the agent with a large commission check.

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

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

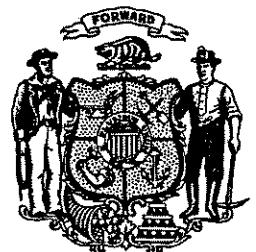
Sincerely,

William Cords  
Director, Intercollegiate Athletics and Recreational Sports

cc: Members of the Wisconsin State Assembly Committee on Colleges and Universities

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

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



I. Introduction

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

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

II. Effect on Existing State Law.

Currently, Wisconsin does not regulate athlete agents.

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

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

- (a) the student athlete or person on behalf of the athlete initiates communication with the individual, AND;
- (b) within 7 days after an "initial act" as an agent such as an effort to recruit or solicit a student athlete to enter into an agency contract, the individual applies for registration as an agent in this state.

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

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

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

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

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

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

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

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

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

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

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

### III. Legislative Action in Previous Session

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

### IV. Policy Significance

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

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

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

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

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

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

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

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

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

V. Administrative Significance

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

VI. Fiscal Effect

VII. Laws in Other States

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

VIII. Summary and Recommendation

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

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

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

The manner of cancellation should be clarified.

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

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

IX. For additional information contact

Office of Legal Counsel

Department of Regulation and Licensing

608-267-1803