

LICENSING DIVISION

- Athlete Agent • Collection Agency • Debt Management •
- Private Detectives • Non-Recourse Civil Litigation Funding Companies •
- Truth & Deception Examiners •

JOHN A. GALE  
Secretary of State

GRACE R. WILLNERD  
Licensing Director

MEMORANDUM

Date: January 10, 2014  
Re: Athlete Agent comments for NASS 2/2014  
To: John Gale and Colleen Byelick  
From: Grace Willnerd, Licensing Director

This memo is intended to give an overview of issues the Licensing Division has faced while administering the Nebraska Uniform Athlete Agent Act and discuss the proposed amendments to the Act. These comments are meant to be presented to the 2014 winter meeting of NASS and aid in the conversation held by the National Conference of Commissioners on Uniform State Laws and their proposed amendments to the Uniform Athlete Agents Act (2000).

**Shortfalls of Current Act**

Registration of Business Entity

Over the last few years of administering the Athlete Agent registration in Nebraska the issue of registering the agent's business entity has caused the most debate. Currently under the Nebraska Uniform Athlete Agent Act Neb. Rev. Stat. §§48-2601 et. al. there is no requirement that the business entity be registered, but after a legal review our office determined that registration was necessary to comply with the various business entity statutes.

As a brief overview, foreign entities that are "transacting business" in Nebraska are required to be registered. See the Business Corporation Act Neb. Rev. Stat. §21-20,168 and the Uniform Limited Liability Act Neb. Rev. Stat. §21-157. Both statutes detail what *does not* constitute transacting business in the state but do not give a specific list of what *does* constitute transacting business. After researching the term "transacting business" further we found that Fletcher's Cyclopedia gives great insight to "what constitutes doing business" and it states "The most important indication of whether a foreign corporation is doing business within the state is whether its acts in the state are part of the function for which the corporation was created." 17A Carol A. Jones Fletcher et al., Fletcher Cyclopedia of the Law of Corporations §4864(perm. Ed., rev. vol. 2007) From Fletcher's definition, if the business entity is created for the purpose of providing

athlete agent services and those services are being provided in Nebraska it logically follows that the business entity should be registered to do business in Nebraska. The registration of the agent's business entity is an additional cost to an athlete agent and may prohibit the expansion of their agent services to multiple states. I have discussed this topic with a few agents and found that other states are not requiring the registration of the business entity prior to registering the applicant as an athlete agent. This may be a question the presenters at NASS could answer for us in more detail.

It would be helpful if the proposed amendments directly exempted these business entities from registration or specifically required the registration. This issue is not addressed in the newly proposed amendments.

#### Attorney Registration

In the current Act there is no mention or exception for attorneys that also serve as athlete agents. We have told attorneys that are applying for an athlete agent registration that they cannot practice law in Nebraska without being a licensed Nebraska attorney. For obvious reasons, the "advice" given as an agent could be very similar to "advice" given by an attorney. This also poses issues when requiring the agent's business entity to be registered. If the agent is an employee of a law firm they must have a licensed Nebraska attorney before the Supreme Court will certify the firm to practice in the state. Our corporate division will not file the formation documents for a law firm without the Supreme Court's certificate.

The comments provided by the ULC state that "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." Again, I see that this could be defined further. This issue is somewhat addressed in one of the amendment options for the definition of "athlete agent."

#### Coordinated Renewal Time

Currently the renewal period is every two years from registration based on the individual athlete agent's registration date. This requires our office to track the renewal dates for each registered athlete agent. Approximately thirty agents are currently registered. The renewals would be more easily administered if the renewal period was a set time for all registrations (i.e. every odd numbered year in June.) The proposed amendments do not contemplate this change, but it could be something we suggest for the statute in Nebraska.

### **Selected Proposed Amendments**

*Amendments other than those discussed below are deliberated in the proposal but those changes would not affect the way our office administers the act.*

#### *Defining Athlete Agent- Section 1*

Four alternatives are given for updating the definition of "athlete agent." I would suggest that Alternative B is the better option as it specifically exempts attorneys and other

consultants providing services customarily provided by those professions from the definition of “athlete agent.”

*Registration of Athlete Agent-Section 5*

The reciprocal requirement to register as an athlete agent from another state are amended to remove the current condition of providing an application no older than 6 months and removes the requirement that the application be signed “under penalty of perjury.” It provides that the registration from another state could not have been revoked or suspended and no other action is pending before granting a reciprocal registration. The amendment also adds a requirement that our office exchange information regarding registrants with “national organizations or agencies in other states, or both.”

These amendments seem reasonable and would allow for a simpler registration of reciprocal athlete agents. Other than very specific investigatory records or personally identifying data all records would be available to the public including “national organization or agencies” and thus I do not find this additional requirement cumbersome to our office.

*Certificate of Registration-Section 6*

This section amends the requirements for renewal to be in keeping with changes made in Section 5.

*Suspension, Revocation, or Refusal to Renew-Section 7*

Adds that our office may suspend or revoke an athlete agent for a reason that would have justified refusal to grant or renew registration under Section 5. This amendment brings Section 5, 6 and 7 into harmony with the proposed additions.