

DRAFT
FOR DISCUSSION ONLY

**AMENDMENTS TO UNIFORM ATHLETE
AGENTS ACT (2000)**

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

For October 25 – 26, 2013 Drafting Committee Meeting

With Prefatory Note and Comments

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ON UNIFORM STATE LAWS

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September 12, 2013

AMENDMENTS TO UNIFORM ATHLETE AGENTS ACT (2000)

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1 **AMENDMENTS TO UNIFORM ATHLETE AGENTS ACT (2000)**

2 **Prefatory Note**

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

10
11 Headlines chronicle the results of these practices. Athletes lose eligibility and may
12 damage promising professional careers. Universities and colleges are sanctioned. The
13 sanctions can be very severe and may include loss of, or liability to return, substantial revenues
14 for participation in post-season events. Frequently, the non-monetary sanctions have long-
15 term, adverse effects on athletic programs. Perhaps as important as any other effect, the
16 reputations of respected educational institutions are tarnished and there is a severe disruption in
17 the activities of those responsible for administration of the institutions.

18
19 As a result of the foregoing, at least twenty-eight States have enacted legislation
20 regulating athlete or sports agents. The statutes differ greatly. About two-thirds of the statutes
21 impose registration requirements. There are substantial differences in the registration
22 procedures, disclosures required and requirements relating to record maintenance, reporting,
23 renewal, notice, warning and security. The term of the registration is one year in thirteen
24 States, two years in four States, and two States do not specify a term. Most States require
25 notification to States or educational institutions and athletes of certain matters, but the matters
26 vary widely. Conscientious agents operating in more than a single State must have nightmares
27 caused by the lack of uniformity in the existing statutes, the difficulty in compliance and the
28 severity of penalties which may be imposed for violations.

29
30 Because of the lack of uniformity and lack of reciprocity provisions in existing statutes,
31 the NCAA and several universities asked the Conference to undertake the drafting of a Uniform
32 Act. After initial reluctance because of the state of its agenda, budgetary considerations and
33 uncertainty that a Uniform Act in this area of the law conform to established criteria for
34 undertaking drafting efforts, the Conference agreed to do so. The Drafting Committee met over
35 a period of three years and had valuable input from athlete agents, coaches, individuals
36 responsible for administering existing acts, and representatives of the players associations of
37 the National Football League, the National Hockey League, major league baseball and the
38 NCAA.

39
40 Many of the provisions in the Uniform Athlete Agents Act are similar or even identical
41 to provisions found in some of the existing acts. The Uniform Act follows the majority of
42 States which have required registration of athlete agents. Registration is required before
43 initiating contact with a student-athlete to induce the signing of an agency contract. If the
44 student-athlete initiates contact with an athlete agent, the athlete agent must apply for

1 registration within seven days after commencing any effort to induce the student-athlete to
2 enter into an agency contract. The act includes a list of disclosures which must be made in the
3 application for registration. It also includes a list of factors the administrator of the act must
4 consider and a list of factors the administrator may consider in determining whether to issue a
5 certificate of registration or suspend, revoke or refuse to renew a registration. The act specifies
6 terms which must be included in an agency contract, requirements of notice to educational
7 institutions after an agency contract has been entered into, the right of the student-athlete to
8 cancel an agency contract within fourteen days after it is signed, and records which must be
9 retained by the athlete agent. Enforcement of the act is provided for by sections which prohibit
10 certain conduct and impose criminal and administrative penalties. The act also provides that an
11 educational institution has civil remedies against either an athlete agent or a former student-
12 athlete for damages caused by violation of the act.
13

14 The act does not require security in the form of malpractice insurance or surety bonds as
15 about half of the existing acts do. Those types of security for athlete agents are not widely
16 available. Insurance usually does not cover intentional acts of the type the act prohibits.
17 Further, the existing acts require security in amounts ranging from \$10,000 to \$100,000. Those
18 amounts are inadequate to provide substantial protection. A requirement of greater security
19 would be likely to reduce the already limited market which is available.
20

21 Most importantly, the act will establish uniformity and provide for reciprocity among
22 the States adopting it. Provisions for reciprocity are found in the sections relating to
23 registration. Administrators are permitted to accept copies of applications for registration filed
24 in other States which adopt the Uniform Act and to consider actions taken in another State
25 which has adopted the Uniform Act in deciding whether to deny, suspend, revoke or refuse to
26 renew registration.

AMENDMENTS TO UNIFORM ATHLETE AGENTS ACT (2000)

1 **SECTION 1. SHORT TITLE.** This [Act act] may be cited as the Amendments to
2 Uniform Athlete Agents Act.

Comment

3 The title Uniform Athlete Agents Act was selected because a majority of the existing
4 acts regulating the activities of agents representing athletes have similar titles.
5
6

7 **SECTION 2. DEFINITIONS.** In this [Act act]:

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

Alternative A

11 (2) “Athlete agent”:

12 (A) includes means an individual who:

13 (i) enters into an agency contract with a student-athlete or, directly or
14 indirectly, recruits or solicits a student-athlete to enter into an agency contract;
15

16 (ii) seeks to obtain financial gain or benefit from securing the enrollment
17 of a student-athlete at an educational institution, unless the individual is an employee of the
18 institution; or

19 (iii) ~~The term includes an individual who~~ represents to the public that the
20 individual is an athlete agent; and

21 (B) ~~The term~~ does not include a spouse, parent, sibling, [or] grandparent[, or
22 guardian] of the student-athlete or an individual acting solely on behalf of a professional sports
23 team or professional sports organization.

1 **Alternative B**

2 (2) “Athlete agent”:

3 (A) includes an individual who, directly or indirectly:

4 (i) recruits or solicits an athlete to enter into an agency contract,
5 endorsement contract, financial services contract, or professional sports services contract or, for
6 compensation, procures, offers, promises, attempts, or negotiates to obtain employment for an
7 individual with a professional sports team or organization or as a professional athlete; or

8 (ii) seeks to obtain financial gain or benefit from securing the enrollment
9 of a student-athlete at an educational institution, unless the individual is an employee of the
10 institution; and

11 (B) does not include:

12 (i) an individual licensed as an attorney, dealer in securities, financial
13 planner, insurance agent, real estate broker or sales agent, tax consultant, or member of another
14 profession, when the individual offers or provides the type of services customarily provided by
15 that profession, except to the extent the individual also recruits or solicits an athlete to enter
16 into an agency contract, endorsement contract, or professional sports services contract or, for
17 compensation, procures, offers, promises, attempts, or negotiates to obtain employment for an
18 individual with a professional sports team or organization or as a professional athlete; or

19 (ii) an individual acting solely on behalf of a professional sports team or
20 organization.

21 **Alternative C**

22 (2) “Athlete agent” means an individual, and any certified contract advisor, financial
23 advisor, marketing representative, brand manager, or other individual employed or associated

1 with the individual, who:

2 (A) represents or attempts to represent an individual for the purpose of

3 marketing his or her athletic ability or reputation for financial gain; or

4 (B) directly or indirectly seeks to obtain financial gain or benefit from securing

5 the enrollment of a student-athlete at an educational institution, unless the individual is an

6 employee of the institution.

7 **Alternative D**

8 (2) “Athlete agent”:

9 (A) includes an individual, and any employee or other individual acting on

10 behalf of the individual, who, directly or indirectly:

11 (i) recruits or solicits a student-athlete to enter into an agency contract;

12 (ii) for financial gain, procures, offers, promises, or attempts to obtain

13 employment or promotional fees or benefits for a student-athlete as a professional athlete, with

14 a professional sports team, or with a promoter that markets or attempts to market the athletic

15 ability or athletic reputation of the student-athlete; or

16 (iii) seeks to obtain financial gain or benefit from securing the

17 enrollment of a student-athlete at an educational institution, unless the individual is an

18 employee of the institution; and

19 (B) does not include a spouse, parent, sibling, grandparent, or guardian of the

20 student-athlete or an individual acting solely on behalf of a professional sports team or

21 professional sports organization.

22 **End of Alternatives**

1 **Discussion of Alternatives**

2 The definition of athlete agent in the existing UAAA was deliberately as broad as
3 possible and intended to cover anyone who, directly or indirectly, recruits or solicits a student-
4 athlete to enter into an agency contract. As the comments to the UAAA made clear, the
5 definition was intended to bring in “runners”. It also would include other individuals, such as
6 an athlete agent’s secretary or other individuals in the office of the athlete agent, who directly
7 or indirectly recruits or solicits a student-athlete to enter into an agency contract. As a result of
8 the broad definition and the fact there are criminal penalties involved, some enforcement
9 entities have expressed a reluctance to prosecute individuals operating as athlete agents who
10 have not complied with the act.

11
12 Other issues relating to the definition of athlete agent include revising the definition to:

13 (1) Include persons who, for consideration, secure the enrollment of the student-athlete
14 at a particular institution, as was done in Mississippi and is included in the NCAA definition.

15 (2) Expand the coverage of the act to include the ongoing relationship between a
16 professional athlete and his or her agent, as was done in California.

17 (3) Involve the concept of consideration, as was done in the definition of athlete agent
18 adopted by the NCAA.

19 (4) Specifically include coaches or assistant coaches who encourage student-athletes to
20 contract with the agent of the coach.

21
22 The draft presents four alternatives:

23
24 All four alternative contain language that includes within the definition of athlete agent
25 an individual who arranges for the enrollment of a student-athlete at a particular institution for
26 any type of financial gain or benefit. None of the alternatives includes language that
27 specifically includes within the definition of athlete agent coaches or assistant coaches who
28 directly or indirectly recruits or solicits a student-athlete to enter into an agency contract with a
29 particular athlete agent since, except for Alternative C, coaches or assistant coaches who do
30 that are already covered. Finally, except for Alternative C, all of the alternatives contain
31 specific exemptions for various classes of individuals. These exemptions vary from alternative
32 to alternative.

33
34 The first alternative is the existing UAAA definition of athlete agent with the addition
35 of the enrollment language.

36
37 The second alternative is the California definition of athlete agent, which expands the
38 UAAA definition to include contracts between professional athletes and athlete agents, with the
39 enrollment language.

40 The third alternative is the NCAA definition of athlete agent, which limits the definition
41 to an individual who for financial gain represents or seeks to represent personally a student-
42 athlete (rather than including individuals who attempt to get a student-athlete to be represented
43 by some other individual), introduces the concept of compensation as an element of the
44 definition, and contains the enrollment language. It does not apply to a coach or assistant coach
45 because it only applies to a person who “represents or seeks to represent an individual...for

1 financial gain.” Regardless of whether the coach was acting for personal financial gain, the
2 attempt would be to have someone else represent the student-athlete.

3
4 The fourth alternative is based on the Florida definition of athlete agent, which contains
5 the directly or indirectly recruits or solicits language of the existing UAAA definition and
6 alternatively adds a financial gain provision, with the enrollment language.

7
8 Depending upon which alternative is selected, conforming changes may be required.

9
10 (3) “Athletic director” means an individual responsible for administering the overall
11 athletic program of an educational institution or, if an educational institution has separately
12 administered athletic programs for male students and female students, the athletic program for
13 males or the athletic program for females, as appropriate.

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

16 (5) “Endorsement contract” means an agreement under which a student-athlete is
17 employed or receives consideration to use on behalf of the other party any value that the
18 student-athlete may have because of publicity, reputation, following, or fame obtained because
19 of athletic ability or performance.

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

23 (7) “Person” means an individual, ~~corporation, business trust, estate, trust, partnership,~~
24 ~~limited liability company, association, joint venture,~~ business or nonprofit entity, public
25 corporation, government, or governmental subdivision, agency, or instrumentality, ~~public~~
26 ~~corporation,~~ or any other legal or ~~commercial~~ entity.

27 (8) “Professional-sports-services contract” means an agreement under which an
28 individual is employed, or agrees to render services, as a player on a professional sports team,

1 or with a professional sports organization, or as a professional athlete.

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

4 (10) “Registration” means registration as an athlete agent pursuant to this [~~Act~~ act].

5 (11) “State” means a ~~State~~ state of the United States, the District of Columbia, Puerto
6 Rico, the United States Virgin Islands, or any territory or insular possession subject to the
7 jurisdiction of the United States.

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

12 **Comment**

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

22
23 Representatives of “professional sports teams or professional sports organizations,”
24 such as baseball teams, are excluded from the definition of “athlete agent” as long as they are
25 acting for their teams or organizations. If a representative should attempt to induce a student-
26 athlete to enter into an agency contract, rather than a contract with the team or organization,
27 registration is required. Also excluded from the definition are individuals who simply provide
28 information to a student-athlete, but who do not recruit or solicit the student-athlete to sign an
29 agency contract. For example, a professional athlete who gives a student-athlete information
30 about the qualifications of an athlete agent is not required to register unless the professional
31 athlete also attempts to recruit or solicit the student-athlete to sign an agency contract. In the
32 exclusion of certain family members from the definition of “athlete agent,” the phrase “or
33 guardian” is bracketed because some States states may use another term to describe an
34 individual who has legal responsibility for the care of another.

1 The definition of “contact” does not include communications which merely provide
2 information to the student-athlete. For example, a communication about the position a student-
3 athlete could reasonably expect to have in a professional draft does not constitute recruitment
4 or solicitation to enter into an agency contract.
5

6 The definition of “student-athlete” applies to a two-sport athlete who has eligibility
7 remaining in one sport. For example, an individual who has signed a contract to play
8 professional basketball is not a student-athlete in basketball, but is a student-athlete in baseball.
9 The definition of “student-athlete” also includes individuals who are not yet in college. It
10 includes high school students, high school dropouts and high school graduates who have
11 delayed matriculation to a college or university so long as the individual may have future
12 eligibility for intercollegiate sports.
13

14 **SECTION 3. SERVICE OF PROCESS; ~~SUBPOENAS~~ SUBPOENA.**

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

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

20 **Comment**

21 The office of Secretary of State has been designated as the administrator of existing acts
22 regulating the activities of athlete agents in 19 states which is more frequently than any other
23 office. The office of Secretary of State is referred to in subsection (b) and throughout this act.
24 It is recognized, however, that the appropriate state office to administer this act may vary from
25 ~~State~~ state to ~~State~~ state and, therefore, references to the Secretary of State are in brackets.
26

27 Subsection (b) is in brackets because it may not be required under the administrative
28 procedure acts of some ~~States~~ states. If subsection (b) is not used, the remainder of the section
29 should not be designated as (a).
30

31 **SECTION 4. ~~ATHLETE AGENTS~~ AGENT: REGISTRATION REQUIRED;**
32 **~~VOID CONTRACTS~~ CONTRACT.**

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

35 (b) Before being issued a certificate of registration under Section 5, 6, or 8, an

1 individual may act as an athlete agent in this ~~State~~ state for all purposes except signing an
2 agency contract, if:

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

5 (2) ~~within~~ not later than seven days after an initial act that requires the individual
6 to register as an athlete agent, the individual submits an application for registration as an athlete
7 agent in this ~~State~~ state.

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

10 **Comment**

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

17
18 Subsection (b) provides a safe harbor for an unregistered individual with whom a
19 student-athlete initiates communications. The individual must apply for registration within
20 seven days from the beginning of any effort to recruit or solicit the student-athlete to enter into
21 agency contract. If the individual does not attempt to recruit or solicit the student-athlete to
22 sign an agency contract, registration is not required. References to “days” in this section and
23 throughout the act mean calendar days.

24
25 In addition to the penalties which may be imposed under Sections 15 and 17, subsection
26 (c) discourages contact with a student-athlete by an individual who has not registered as an
27 athlete agent. An agency contract resulting from that contract is void, not merely voidable.

28
29 **SECTION 5. REGISTRATION AS ATHLETE AGENT; FORM;**
30 **REQUIREMENTS.**

31 (a) ~~An~~ Except as otherwise provided in subsection (b), an applicant for registration as
32 an athlete agent shall must submit an application for registration to the [Secretary of State] in a
33 form prescribed by the [Secretary of State]. ~~[An application filed under this section is a public~~

1 ~~record.~~ The application must be in the name of an individual, ~~and, except as otherwise~~
2 ~~provided in subsection (b)~~, signed or otherwise authenticated by the applicant under penalty of
3 perjury, and state or contain:

4 (1) the name of the applicant and the address of the applicant's principal place of
5 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 five years
8 next preceding the date of submission of the application;

9 (4) a description of the applicant's:

10 (A) formal training as an athlete agent;

11 (B) practical experience as an athlete agent; and

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

14 (5) the names and addresses of three individuals not related to the applicant who
15 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 five years next preceding the date of submission
18 of the application;

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

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

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

1 or greater;

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

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

8 (10) any instance in which the conduct of the applicant or any person named
9 pursuant to paragraph (7) resulted in the imposition of a sanction, suspension, or declaration of
10 ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-
11 athlete or educational institution;

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

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

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

23 ~~(1) was submitted in the other State within six months next preceding the~~

1 ~~submission of the application in this State and the applicant certifies that the information~~
2 ~~contained in the application is current;~~

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

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

6 (b) In lieu of proceeding under subsection (a), an individual who is registered as an
7 athlete agent in another state may register in this state by submitting a copy of the application
8 for registration and the registration from the other state to the [Secretary of State] and paying
9 the applicable fee. The [Secretary of State] shall issue a certificate of registration to the
10 individual if the [Secretary of State] determines:

11 (1) the law of the other state under which the individual is registered is
12 substantially similar to or more restrictive than this [act]; and

13 (2) the registration has not been revoked or suspended and no action by the
14 other state involving the individual's conduct as an athlete agent is pending against the
15 individual or the registration.

16 (c) For purposes of implementing subsection (b), the [Secretary of State]:

17 (1) shall cooperate with national organizations that are concerned with athlete
18 agent issues or agencies in other states which register athlete agents, or both, to determine
19 which states have laws that are substantially similar to or more restrictive than this [act]; and

20 (2) shall exchange information, including information related to actions taken
21 against registered athlete agents, with those national organizations or agencies in other states,
22 or both.

23 **Comment**

24 Most of the requirements for disclosure in an application for registration found in

1 subsection (a) are similar to requirements imposed by existing acts. Subsection (a)(6) is not
2 intended to cause an athlete agent who is also an attorney to violate the attorney-client
3 privilege. If an attorney's role is limited to providing legal services to a student-athlete, the
4 attorney is not required to register as an athlete agent or comply with this act. An attorney's
5 actions as an athlete agent, however, are outside the scope of legal services, there is no
6 privilege and the attorney must comply with this act.
7

8 It is the intent of this section to require that records concerning registration of athletes
9 be open to the public. ~~The provision in subsection (a) about an application being a public
10 record is bracketed because it is not necessary in States which have other applicable law
11 causing the records to be open to the public.~~
12

13 ~~Subsection (b) provides for reciprocal use of applications in States which have adopted
14 the Uniform Act. The need for an agent to comply with substantially different application
15 procedures in multiple jurisdictions is eliminated. It is the first of a number of reciprocity
16 provisions found in the act which are intended to ease the burden placed on agents by
17 substantially different registration requirements and to simplify enforcement of the act.
18 Absence of reciprocity provisions in existing acts is a primary reason why the Uniform Act is
19 needed.~~
20

21 Subsections (b) and (c) are an attempt to strengthen the reciprocity provisions of the
22 original UAAA. The original UAAA provided that an individual registered in another state
23 could submit an application for registration in that state to the [Secretary of State] in the
24 enacting state if it had been submitted in the state of registration within the previous six months
25 and the applicant certified the information was current. The [Secretary of State] in the enacting
26 state would then proceed on that application and determine whether the individual should be
27 registered, applying the test of Section 6(b). In other words, the current UAAA provision
28 merely substituted the application in another state for the application in the enacting state and
29 did nothing to reduce the workload of the [Secretary of State] in the enacting state. The changes
30 in subsection (b) would add the registration from the other state for the application. Thus, the
31 [Secretary of State] in the enacting state, without having to apply the Section 6(b) test, would
32 register in that state an athlete agent registered in another state if the law of the other state was
33 substantially similar or more restrictive than the enacting state **and** the registration in the other
34 state was in good standing and no actions were pending against it. This provision should
35 substantially encourage uniformity between the states. This change also should significantly
36 reduce the cost of registration in subsequent states and make it less burdensome on athlete
37 agents who wish to operate in multiple states.
38

39 Subsection (c) requires the [Secretary of State] to cooperate and exchange information
40 with national organizations that are concerned with athlete agent issues, such as the National
41 Association of Secretaries of State, National Football League Players Association, NCCA, etc.,
42 or any other organization may be created in the future, and the agencies in other states that
43 register athlete agents. The purpose of this requirement is to encourage current national
44 organizations to operate as a "clearing house" for information to determine which laws are
45 substantially similar or more restrictive for purposes of reciprocal licensing and to exchange
46 information about actions taken against athlete agents by the various organizations or the

1 various states.

2

3

SECTION 6. CERTIFICATE OF REGISTRATION; ISSUANCE OR DENIAL;

4

RENEWAL.

5

(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).~~

6

7

8

(b) The [Secretary of State] may refuse to issue a certificate of registration to an individual who also submits an application under Section 5(a) if the [Secretary of State]

9

10

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:

11

12

13

(1) been convicted of a crime that, if committed in this ~~State~~ state, would be a crime involving moral turpitude or a felony;

14

15

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

16

17

(3) engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;

18

19

(4) engaged in conduct prohibited by Section 14;

20

(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~~ state;

21

22

(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

23

24

1 (7) engaged in conduct that significantly adversely reflects on the applicant's
2 credibility, honesty, or integrity.

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

5 (1) how recently the conduct occurred;

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

7 (3) any other relevant conduct of the applicant.

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

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

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

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

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

2 (e) An athlete agent who is registered under Section 5 (b) may renew the registration by
3 proceeding under subsection (d) or, if the registration in the other state has been renewed, by
4 submitting a copy of the application for renewal in the other state and the renewal registration
5 from the other state to the [Secretary of State] and paying the applicable fee. The [Secretary of
6 State] shall renew the registration if the [Secretary of State] determines:

7 (1) the law of the other state under which the registration was renewed is
8 substantially similar to or more restrictive than the law of this state; and

9 (2) the renewed registration has not been revoked or suspended and no action by
10 the other state is pending against the individual or the renewed registration.

11 (f) A certificate of registration or a renewal of a registration under this [act] is valid for
12 [two] years.

13 **Comment**

14 This section includes many of the factors which are considered in determining whether
15 to register athlete agents under existing legislation. ~~In addition, the Secretary of State is~~
16 ~~authorized to consider action taken in another State, which has adopted the Uniform Act,~~
17 ~~regarding registration or licensure.~~

18
19 ~~A requirement that Secretaries of State exchange information about denial, suspension,~~
20 ~~revocation or refusal to renew registration of athlete agents is beyond the scope of this act.~~
21 ~~Since an agreement to exchange such information would reduce the expense of administering~~
22 ~~this act and provide for more effective enforcement, it seems likely the Secretaries of State will~~
23 ~~enter into such an agreement.~~

24
25 An individual who is not registered in another state and wishes to be registered in this
26 state is required to apply for initial registration under Section 5 (a) and renewal under
27 subsection (d) of this section. The [Secretary of State] may refuse to register on the grounds
28 contained in subsection (b). The only grounds for denial of registration under Section 5 (b) or
29 renewal of registration under subsection (e) of an individual registered in another state is that
30 the law of the other state is not substantially similar to or more restrictive than the law of the
31 enacting state or action against that individual by the other state.

1 **Comment**

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

8
9 **SECTION 9. REGISTRATION AND RENEWAL FEES.** An application for

10 registration or renewal of registration as an athlete agent must be accompanied by a fee in the
11 following amount:

12 (1) ~~[\$]~~ for an initial application for registration;

13 (2) ~~[\$]~~ for ~~an application for~~ registration based ~~upon~~ on a certificate of registration
14 ~~or licensure~~ issued by another ~~State~~ state;

15 (3) ~~[\$]~~ for an application for renewal of registration; or

16 (4) ~~[\$]~~ for ~~an application for~~ renewal of registration based ~~upon an application for~~
17 on a renewal of registration ~~or licensure submitted~~ in another ~~State~~ state.

18 **Comment**

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

24
25 Athlete agent registration is the cornerstone of this act. High registration fees imposed
26 by some ~~State~~ states with existing acts have probably contributed to seemingly small numbers
27 of registrants under existing acts. The success of this act may be contingent on the
28 implementation of a reasonable fee structure which does not motivate non-compliance.

29
30 **SECTION 10. REQUIRED FORM OF CONTRACT.**

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

33 (b) An agency contract must state or contain:

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

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

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

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

10 (5) the duration of the contract; and

11 (6) the date of execution.

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

14 **WARNING TO STUDENT-ATHLETE**

15 **IF YOU SIGN THIS CONTRACT:**

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

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

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

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

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

7 **Comment**

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

13
14 A student-athlete who opts to void an agency contract under this section because it does
15 not comply with the specified form is not required to return any consideration received to
16 induce the signing of the agency contract because such inducement is prohibited conduct under
17 Section 14.

18
19 The compensation referred to in subsection (b)(2) is compensation for services intended
20 to induce the student-athlete to sign an agency contract. It does not include compensation
21 individuals may receive because an athlete agent has been successful in securing an agency
22 contract. For example, the compensation paid employees of an athlete agent who did not
23 participate in inducing the student-athlete to sign an agency contract is not compensation under
24 subsection (b)(2) even though their compensation may be made possible by the income
25 resulting from the agency contract.

26
27 Subsection (b) contains references to a student-athlete in a time context in which the
28 individual may be a former student-athlete. This is done for simplicity in drafting. It should be
29 noted that violation of eligibility rules adopted by an educational institution or a national
30 association is not automatic and does not occur until a determination has been made by the
31 educational institution or the national association

32 **SECTION 11. NOTICE TO EDUCATIONAL INSTITUTION.**

33
34 (a) ~~Within~~ Not later than 72 hours after entering into an agency contract or before the
35 next scheduled athletic event in which the student-athlete may participate, whichever occurs
36 first, the athlete agent shall give notice in a record of the existence of the contract to the athletic

1 director of the educational institution at which the student-athlete is enrolled or the athlete
2 agent has reasonable grounds to believe the student-athlete intends to enroll.

3 (b) ~~Within~~ Not later than 72 hours after entering into an agency contract or before the
4 next athletic event in which the student-athlete may participate, whichever occurs first, the
5 student-athlete shall inform the athletic director of the educational institution at which the
6 student-athlete is enrolled that he or she has entered into an agency contract.

7 **Comment**

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

13
14 **SECTION 12. STUDENT-ATHLETE'S RIGHT TO CANCEL.**

15 (a) A student-athlete may cancel an agency contract by giving notice of the cancellation
16 to the athlete agent in a record ~~within~~ not later than 14 days after the contract is signed.

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

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

21 **Comment**

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

28
29 **SECTION 13. REQUIRED RECORDS.**

30 (a) An athlete agent shall retain ~~the following~~ records of the following for a period of

1 five years:

2 (1) the name and address of each individual represented by the athlete agent;

3 (2) ~~any~~ each agency contract entered into by the athlete agent; and

4 (3) ~~any~~ direct costs incurred by the athlete agent in the recruitment or

5 solicitation of a student-athlete to enter into an agency contract.

6 (b) Records required by subsection (a) to be retained are open to inspection by the

7 [Secretary of State] during normal business hours.

8 **SECTION 14. PROHIBITED CONDUCT.**

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

11 (1) give any materially false or misleading information or make a materially
12 false promise or representation;

13 (2) furnish anything of value to a student-athlete before the student-athlete
14 enters into the agency contract; or

15 (3) furnish anything of value to ~~any~~ an individual other than the student-athlete
16 or another registered athlete agent.

17 (b) An athlete agent may not intentionally:

18 (1) initiate contact with a student-athlete unless registered under this [~~Act~~ act];

19 (2) refuse or fail to retain or permit inspection of the records required to be
20 retained by Section 13;

21 (3) fail to register when required by Section 4;

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

1 (5) predate or postdate an agency contract; or

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

5 (c) Before initiating contact with a student-athlete, an athlete agent shall notify in a
6 record the athletic director of the educational institution at which the student-athlete is enrolled
7 or the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.

8 **Comment**

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

11
12 Subsection (a)(3) prohibits an athlete agent from making any payment or providing
13 anything of value to an individual who is in a position to influence a student-athlete to enter
14 into an agency contract unless that individual is registered as an athlete agent. There have been
15 numerous instances in which an athlete agent has made payment to or provided something of
16 value to family members, friends or roommates of student-athletes to enlist their services in
17 inducing a student-athlete to sign an agency contract usually without disclosure to the student-
18 athlete.

19
20 If a student-athlete signs an agency contract in the form required by Section 10, there is
21 no failure to notify under subsection (b)(6) because the agency contract includes the warning to
22 student-athlete required by Section 10(c).

23
24 Subdivision (c) is a provision that has been added to the UAAA in several states.

25
26 **Alternative A**

27
28 **SECTION 15. CRIMINAL PENALTIES.** An athlete agent who violates Section 14
29 is guilty of a [misdemeanor] [felony] and, upon conviction, is punishable by [].

30 **Alternative B**

31
32 (a) An athlete agent or athlete agent's representative or employee who violates any
33 provision of this [act] is guilty of a misdemeanor and shall be punished by a fine of not more
34 than ~~fifty thousand dollars~~ (\$50,000), or imprisonment in a county jail not exceeding one year,

1 or by both ~~that fine and imprisonment.~~

2 (b) The court shall suspend for a period of not less than one year or, ~~where~~ when
3 appropriate, revoke the privilege of ~~any~~ an individual convicted of a violation of this [act] to
4 conduct the business of an athlete agent. In deciding whether to suspend or revoke the privilege
5 to conduct the business of an athlete agent, the court shall consider ~~any one or more of the~~
6 relevant circumstances presented by any of the parties to the case, including the nature and
7 seriousness of the misconduct, the number of violations, the persistence of the misconduct, the
8 length of time over which the misconduct occurred, and the willfulness of the defendant's
9 misconduct.

10 (c) ~~Upon~~ On a conviction of a violation of this [act] relating to an athlete agent and a
11 student-athlete or educational institution, or both, the court, in addition to the punishment
12 imposed under subsection (a), shall order ~~an~~ the athlete agent or athlete agent's representative
13 or employee to disgorge all consideration received in connection with the violation.

14 (d) Fines in an action under this section ~~shall~~ must be distributed as follows:

15 (1) If the action is brought by the Attorney General, the fine ~~shall~~ must be paid
16 into the state General Fund.

17 (2) If the action is brought by a district attorney, two-thirds of the fine ~~shall~~ must
18 be paid into the ~~General Fund~~ general fund of the county in which the action was brought and
19 one-third ~~shall~~ must be paid into the state General Fund.

20 (3) If the action is brought by a city attorney, two-thirds of the fine ~~shall~~ must be
21 paid into the ~~General Fund~~ general fund of the city and one-third ~~shall~~ must be paid into the
22 state General Fund.

23 **End of Alternatives**

1 **Discussion of Alternatives**

2 Alternative B is based on the California criminal provision. It creates an incentive to
3 enforcement by requiring all or a portion of the fines to be distributed to the General Fund of
4 the enforcing agency.
5

6 **Comment**

7 The extent of the criminal penalties which may be imposed for violation of the act are
8 left to the States adopting the act because of a wide variation in the criminal penalties provided
9 for by existing acts. Variations in the criminal penalties which may be imposed would not
10 detract from the otherwise uniform and reciprocal provisions of the act. Some potential
11 criminal penalty is necessary to discourage those individuals who are willing to engage in
12 improper or illegal conduct because of the size of the monetary stakes in the contemporary
13 professional sports world.
14

15 **SECTION 16. CIVIL REMEDIES.**

16 **Alternative A**

17
18 (a) An educational institution has a right of action against an athlete agent or a former
19 student-athlete for damages caused by a violation of this [~~Aet~~ act]. In an action under this
20 section, the court may award to the prevailing party costs and reasonable attorney’s fees.

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

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

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

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

5 **Alternative B**

6 (a) An individual ~~may bring an~~ has a right of action for ~~recovery of damages from~~
7 against an athlete agent if the individual is adversely affected by an act in violation of this [act]
8 by the athlete agent or a representative or employee of the agent. If the individual was a
9 student-athlete at the time the act occurred, the student-athlete is presumed to be adversely
10 affected by an act of an athlete agent or a representative or employee of the agent if, because of
11 the act, the student-athlete is:

12 (1) suspended or disqualified from participation in one or more interscholastic or
13 intercollegiate sports events by or pursuant to the rules of a state or national federation or
14 association for the promotion and regulation of interscholastic or intercollegiate sports ~~or~~;

15 (2) suffers financial damage; or

16 (3) suffers both suspension or disqualification and financial damage.

17 (b) An elementary or secondary school, college, university, or other educational
18 institution or a league, conference, association, or federation of educational institutions ~~may~~
19 ~~bring an~~ has a right of action for ~~recovery of damages from~~ against an athlete agent if the
20 institution or any member of the league, conference, association, or federation of which the
21 institution is a member is adversely affected by an act in violation of this [act] by the athlete
22 agent or a representative or employee of the agent. An institution is presumed to be adversely
23 affected by an act of an athlete agent or a representative or employee of the agent if, because of

1 the act, ~~because of the act~~, the educational institution or an individual who was a student-athlete
2 at the time of the act and admitted to or enrolled in the institution is:

3 (1) suspended or disqualified from participation in one or more interscholastic or
4 intercollegiate sports events by or pursuant to the rules of a state or national federation or
5 association for the promotion and regulation of interscholastic or intercollegiate sports ~~or~~;

6 (2) suffers financial damage; or

7 (3) suffers both suspension or disqualification and financial damage.

8 (c) A plaintiff that prevails in an action brought under this section may recover actual
9 damages or ~~up to~~ \$50,000, whichever is greater, punitive damages, court costs, and reasonable
10 attorney's fees. An athlete agent found liable under this section shall forfeit any right or
11 repayment for anything of benefit or value provided to a student-athlete and shall refund any
12 consideration paid to the agent by or on behalf of the student-athlete.

13 **End of Alternatives**

14 **Discussion of Alternatives**

15
16 Alternative B is based on Section 18897.8 of the California Business and Professions
17 Code. The California Athlete Agents Act includes individuals who represent professional
18 athletes on an ongoing basis, not just the relationship between student-athletes and athlete
19 agents. Accordingly, one of the revisions was to delete a cause of action for professional
20 athletes. A second revision was to limit the cause of action to individuals who were student-
21 athletes at the time the act of the athlete agent being litigated occurred since a student-athlete
22 who accepts consideration from an athlete agent or signs and agency contract is no longer a
23 student-athlete, at least in the sport involved. The section creates a presumption that a student-
24 athlete is adversely affected if the student-athlete is suspended or disqualified from
25 participating in one or more interscholastic or intercollegiate sport events. This presumption
26 would not arise in the circumstance where a student-athlete was stripped of some honor
27 received as a student-athlete because of the act of an athlete agent.

28
29 The California law also gives a cause of action to an educational institution that is
30 adversely affected by an act of an athlete agent and creates a presumption an institution is
31 adversely affected if it or a student-athlete admitted to or enrolled in the institution is
32 suspended or disqualified.

1 Finally, the California law gives a cause of action to a “league, conference, association,
2 or federation” of which an adversely affected institution is a member but does not create any
3 presumption of adversely affected. It may be that the language of the California law is so broad
4 that it may give a cause of action to the NCAA for the actions of an athlete agent that resulted
5 in the NCAA imposing sanctions on one of its members.
6

7 **Comment**

8 It is assumed that educational institutions will be very reluctant to bring an action
9 against a former student-athlete. Public opinion and the desire to be successful in future
10 recruiting of athletes should cause educational institutions to carefully consider whether to
11 exercise the right established by subsection (a) in most situations. There are, however, known
12 instances of extremely egregious conduct by student-athletes who received lucrative
13 professional contracts which caused serious damage to educational institutions. Subsection (a)
14 keeps open the possibility of a civil action against those individuals.
15

16 Section 16 does not specifically authorize an action by a student-athlete against an
17 athlete agent because the student-athlete can bring an action against an athlete agent under
18 existing law. Subsection (e) preserves the rights of the student-athlete under existing law.
19

20 **SECTION 17. ADMINISTRATIVE PENALTY.** The [Secretary of State] may
21 assess a civil penalty against an athlete agent or student-athlete not to exceed \$[25,000] for a
22 violation of this [~~Act~~ act].

23 **Comment**

24 The procedure for imposing an administrative penalty and complying with due process
25 requirements are left to the adopting ~~State’s~~ state’s administrative procedures law.
26

27 Student-athletes are added to those against whom the [Secretary of State] may impose a
28 civil penalty.
29

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

34 **SECTION 19. ~~ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL~~**
35 **~~COMMERCE ACT.~~** ~~The provisions of this [Act act] governing the legal effect, validity, or~~
36 ~~enforceability of electronic records or signatures, and of contracts formed or performed with~~

1 ~~the use of such records or signatures conform to the requirements of Section 102 of the~~
2 ~~Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat.~~
3 ~~464 (2000), and supersede, modify, and limit the Electronic Signatures in Global and National~~
4 ~~Commerce Act.~~

5 **RELATION TO ELECTONIC SIGNATURES IN GLOBAL AND NATIONAL**
6 **COMMERCE ACT.** This [act] modifies, limits, or supersedes the Electronic Signatures in
7 Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit,
8 or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic
9 delivery of any of the notices described in Section 103 (b) of that act, 15 U.S.C. Section
10 7003(b).

11 **Comment**

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

17
18 **[SECTION 20. SEVERABILITY.** If any provision of this [~~Aet~~ act] or its application
19 to any person or circumstance is held invalid, the invalidity does not affect other provisions or
20 applications of this [~~Aet~~ act] which can be given effect without the invalid provision or
21 application, and to this end the provisions of this [~~Aet~~ act] are severable.]

22 **Legislative Note:** Include this section only if this state lacks a general severability statute or a
23 decision by the highest court of this state stating a general rule of severability.

24
25 **SECTION 21. REPEALS; CONFORMING AMENDMENTS.** ~~The following acts~~
26 ~~and parts of acts are hereby repealed:~~

27 (a)

28 (b)

1 (c)

2 **SECTION 22. EFFECTIVE DATE.** This [~~Aet~~ act] takes effect....