

D R A F T

FOR DISCUSSION ONLY

UNIFORM ATHLETE AGENTS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

January 2000

UNIFORM ATHLETE AGENTS ACT

WITH PREFATORY NOTE AND REPORTER'S NOTES

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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UNIFORM ATHLETE AGENTS ACT

PREFATORY NOTE

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

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

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

Since 1981 at least 28 States have enacted statutes regulating athlete agents. Those statutes are not uniform and do not provide for reciprocal enforcement. Several major universities and the NCAA have asked the Conference to draft this Uniform Act and have pledged their support in obtaining enactments. The NCAA agreed to finance the drafting project. Although treading on regulatory ground the Conference has usually avoided the Conference, with some reluctance, agreed to draft a Uniform Act.

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UNIFORM ATHLETE AGENTS ACT

SECTION 101 1. SHORT TITLE. This [Act] may be cited as the Uniform Athlete

Agents Act.

Reporter's Notes

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

SECTION 102 2. DEFINITIONS. In this [Act]:

~~(2)~~(1) "Agency contract" means an agreement in which a student-athlete

authorizes ~~a person~~ an athlete agent to negotiate or solicit on behalf of the student-athlete a professional ~~sports~~-services contract or an endorsement contract.

~~(1)~~(2) "Athlete agent" means an individual who enters into an agency contract

with a student-athlete or who, ~~directly or indirectly,~~ contacts, ~~recruits,~~ or solicits a student-athlete to enter into an agency contract, ~~a professional sports services contract,~~ or ~~an endorsement contract.~~ The term does not include an individual acting solely on behalf of a professional sports team or professional sports organization or an individual acting solely for ~~his or her~~ the individual's spouse, child, grandchild, or ward. The term includes an individual who holds himself or herself out as an athlete agent.

(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 programs for male students and female students, the athletic

1 program for males or the athletic program for females, as appropriate.

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

5 Contact does not include estimates of the position in any professional draft the student-
6 athlete could reasonably expect to have.

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

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

16 (7) "Professional_sports-services contract" means a contract under which a
17 ~~student athlete~~ an individual is employed or agrees to render services as a player on a
18 professional sports team or professional sports organization or as a professional athlete.

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

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

23 (10) "Student-athlete" means an individual who engages in, is eligible to engage

1 in, or may be eligible in the future to engage in, any intercollegiate sport.

2 ~~An~~ If an individual is not a student-athlete if the individual is ineligible eligible to
3 participate in a particular sport, ~~unless:~~ the individual is not a student-athlete for purposes
4 of that sport.

5 (A) ~~the individual's eligibility to participate in that particular sport is restored; or~~

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

9 **Reporter's Notes**

10
11 In paragraph (1), the definition of "athlete agent" is limited to individuals, i.e., a
12 corporation that employs athlete agents would not be required to register as an athlete
13 agent but the individuals would. The term includes not only an individual who enters
14 into an agency contract with a student-athlete but also the "runners" agents use to recruit
15 the student-athlete to sign with a particular agent. The Drafting Committee considered
16 and decided against exclusions for individuals otherwise licensed by the State, such as
17 attorneys. The committee did not intend to require an attorney to register as an athlete
18 agent in order to render legal services, as opposed to services as an athlete agent, to a
19 student-athlete.

20 In paragraph (10), "student-athlete" is defined to allow the Act to apply to a two-sport
21 athlete who has signed a professional contract in one sport but has eligibility remaining in
22 another sport. It is also defined to include individuals who are not yet in college or even
23 eligible for college in an attempt to prevent agents from inducing high school students to
24 jeopardize their college eligibility. It is also defined to include a high school dropout
25 who may become eligible by completing a GED and a high school graduate who does not
26 go to college immediately.

27 **SECTION 103 3. ADMINISTRATION.** The [Secretary of State] shall administer
28 this [Act].

29 **Reporter's Notes**

30 The Secretary of State appears to be a common office to administer an athlete agent
31 registration program.

1 **REQUIREMENTS.**

2 (a) An applicant for registration as ~~an athlete agent~~ shall submit a written
3 application for registration to the [Secretary of State] on a form prescribed by the
4 [Secretary of State]. [An application filed under this section is a public record]. Except
5 as otherwise provided in subsection (b), the application must state or contain:

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

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

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

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

12 (A) formal training as an athlete agent;

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

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

16 (5) the names and addresses of three individuals not related to the applicant
17 who can provide references;

18 (6) the name, sport, and last known team, club, or organization of all
19 individuals ~~represented by~~ for whom the applicant provided services as an athlete agent
20 during the five years next preceding the date of submission of the application;

21 (7) the names and addresses of all persons who have a financial interest in the
22 ~~operation of the business~~ conduct of the applicant as an athlete agent including partners,
23 associates, or profit-sharers, ~~but not including~~ other than employees on fixed salaries;

1 ~~(8) any crime, other than a minor traffic offense, of which the applicant~~
2 ~~has been convicted;~~

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

6 (9) any administrative or judicial determination that the applicant, as an
7 athlete agent, has made a false, misleading, deceptive, or fraudulent representation ~~as an~~
8 ~~athlete agent~~;

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

13 (11) any sanction, suspension, or disciplinary action taken against the
14 applicant or any other person named pursuant to paragraph (7) arising out of the
15 applicant's occupational or professional conduct ~~misconduct in his or her occupation or~~
16 ~~profession~~;

17 (12) any denial of an application ~~or suspension, revocation, for, suspension or~~
18 revocation of, or refusal to renew, the applicant's registration or licensure of the applicant
19 or any other person named pursuant to paragraph (7) as an athlete agent in any State; and

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

21 (b) An individual who has ~~filed~~ submitted an application ~~to be~~ for registration or
22 licensure as an athlete agent in another State, in lieu of ~~filing~~ submitting an application in
23 this State, may ~~file~~ submit a copy of the application from the other State. The [Secretary

1 of State] shall accept the application from the other State as an application for registration
2 in this State if the application from the other State:

3 (1) was ~~filed~~ submitted in the other State within the ~~next preceding~~ last six
4 months or

5 the applicant certifies the information contained in the application is current; ~~and~~

6 (2) contains information substantially similar to or more detailed than that
7 required in an application ~~filed~~ submitted in this State-; and

8 (3) was filed under penalty of perjury.

9 **Reporter's Notes**

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

13 With regard to (a)(6), the Committee recognized that athlete agents who are attorneys
14 may serve the client in a dual capacity. It was the intention of the Committee however, to
15 have the Act override any special privileges an attorney might have. In other words, if an
16 attorney acts as an athlete agent in negotiating an endorsement contract, the attorney
17 would not be able to assert an attorney-client privilege with respect to the existence of the
18 contract.

19 With regard to subsection (b), the athlete agent industry felt, and the Committee
20 agreed, that it was important to allow a single registration in those States enacting the
21 Act.
22

23 **~~SECTION 106 6. ISSUANCE, DENIAL, SUSPENSION, REVOCATION OF,~~**
24 **~~OR REFUSAL TO RENEW CERTIFICATE OF REGISTRATION; ISSUANCE~~**
25 **OR DENIAL.**

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

1 5(a). A certificate of registration is valid for [two] years.

2 ~~(a)(b)~~ Except as otherwise provided in subsection (c), ~~The~~ the [Secretary of State]
3 shall issue a certificate of registration to an individual who has complied with Section
4 ~~405 5~~ 5 (b) and submits satisfactory proof that the individual is ~~licensed or registered or~~
5 licensed in the State in which the application submitted pursuant to Section ~~405 5~~ 5 (b) was
6 filed ~~and if~~ if the [Secretary of State] determines the requirements ~~for licensure or~~
7 registration or licensure in the other State are substantially similar to or more stringent
8 than those of this State.

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

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

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

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

20 (4) ~~committed any act~~ engaged in conduct prohibited by Section ~~415 15~~ 15;

21 (5) had a registration or licensure as an athlete agent suspended, revoked, or
22 denied or been refused renewal of registration or licensure in any State; or

23 (6) ~~taken action~~ engaged in conduct or failed to engage in conduct the

1 consequence of which was that that resulted in the imposition of a sanction, suspension,
2 or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic
3 event was imposed on a student-athlete or educational institution.

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

6 (1) the period between the conduct and the application;

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

8 (3) any ~~activity~~ conduct of the applicant since the conduct under subsection
9 (c) which demonstrates that the conduct is unlikely to recur.

10 **Reporter's Notes**

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

15 **SECTION ~~107~~ 7. RENEWAL.**

16 (a) An athlete agent may apply to renew a registration by ~~filing~~ submitting an
17 application for renewal in a form prescribed by the [Secretary of State]. The application
18 for renewal must contain current information on matters required in an original
19 registration.

20 (b) An individual who has ~~filed~~ submitted an application for renewal of
21 registration or licensure in another State, in lieu of ~~filing~~ submitting an application for
22 renewal in this State, may file a copy of the application for renewal from the other State.

23 The [Secretary of State] [shall] [may] accept the application for renewal from the
24 other State as an application for renewal in this State if the application for renewal of

1 registration or licensure from the other State:

2 (1) ~~the application from the other State~~ was ~~filed~~ submitted in the other State
3 within the ~~next preceding~~ last six months or the applicant certifies the information
4 contained in the application for renewal is current; and

5 (2) ~~the application for renewal from the other State~~ contains information
6 substantially similar to or more detailed than that required in an application for renewal
7 ~~filed~~ submitted in this State.

8 (c) A renewal of a registration is valid for two years.

9 **Reporter's Notes**

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

12 **SECTION ~~108~~ 8. SUSPENSION, REVOCATION, OR REFUSAL TO RENEW**

13 **REGISTRATION.** The [Secretary of State] may suspend, revoke, or refuse to renew a
14 registration for ~~any reason~~ conduct that would have justified denial of a registration under
15 Section ~~106~~ 6(c).

16 **Reporter's Notes**

17 The Committee intended that the issuance of a temporary license should be
18 discretionary and the discretion should be cast in terms broad enough to include issuing a
19 license in contested cases. The Committee did not feel it necessary that a temporary
20 license had to be issued to protect an individual who had student-athlete initiated contact
21 with a student-athlete under Section 4(b), since all that is required of the individual is that
22 an application for registration be filed.

23 **SECTION ~~109~~ 9. TEMPORARY REGISTRATION.** The [Secretary of State]

24 may issue a temporary certificate of registration while considering an application for
25 registration or renewal.

1 of [\$100,000] or equivalent security.

2 **Reporter's Notes**

3 Since there was no clear indication that a multi-state errors and omissions policy for
4 athlete agents is available, the Committee did not address directly whether an athlete
5 agent operating in multiple States could furnish a single policy applicable to all States in
6 which the agent operates or would be required to have a separate policy in each State.

7 **SECTION ~~112~~ 12. FORM OF CONTRACT.**

8 (a) ~~An~~ Notwithstanding [the Uniform Electronic Transactions Act], an agency
9 contract must be in writing, signed by the student-athlete and, if the student-athlete is a
10 minor, by a parent or guardian of the student-athlete[;] [and the court having jurisdiction],
11 ~~and a copy must be furnished~~ the athlete agent shall give a copy of the contract to the
12 student-athlete at the time of signing.

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

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

19 (2) the name of any person not listed in the application for registration ~~who~~ or
20 renewal that will receive any portion of the ~~compensation~~ consideration;

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

22 (4) a description of the services to be ~~furnished~~ provided to the student-
23 athlete; and

24 (5) the duration of the contract.

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

3 **WARNING TO STUDENT-ATHLETE**

4 **IF YOU SIGN THIS CONTRACT, YOU WILL LOSE YOUR ELIGIBILITY TO**
5 **COMPETE NONPROFESSIONALLY IN YOUR SPORT. BOTH YOU AND YOUR**
6 **ATHLETE AGENT ARE REQUIRED TO TELL YOUR ATHLETIC DIRECTOR, IF**
7 **YOU HAVE ONE, IF YOU SIGN THIS CONTRACT. IF YOU SIGN, YOU MAY**
8 **CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT.**
9 **CANCELLATION OF THE CONTRACT MAY NOT REINSTATE YOUR**
10 **ELIGIBILITY.**

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

13 **Reporter's Notes**

14 With respect to subsection (a), the Committee, in view of the disparity in
15 sophistication between the parties, felt it be important there be a hard copy of the
16 contract.

17
18 With regard to subsection (b), the Committee was particularly concerned with
19 anecdotal information that "gifts," such as automobiles, given to student-athletes to
20 induce them to enter into agency contracts are in fact loans that are repaid from the
21 student-athlete's future earnings. Accordingly, the Committee sought to have the contract
22 clearly disclose those types of arrangements.

23 In subsection (d), the Committee felt that since the student-athlete loses eligibility
24 when an agency contract is signed, a contract that does not comply with this section
25 ought to give the student-athlete the benefit of his or her bargain and therefore should be
26 voidable at the option of the student-athlete. The student-athlete would exercise this
27 option under Section ~~114~~ 14 and would be entitled to keep any inducements received
28 from the agent. This should be contrasted with an agency contract with an individual
29 required to register as an athlete agent but who did not. In that case, the Committee felt
30 the student-athlete should not be able, in effect, to ratify an unlawful agreement.

1 **SECTION ~~15~~ 15. PROHIBITED ACTS.**

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

4 (1) give any false or misleading information or make a false promise or
5 representation;

6 (2) furnish anything of value or ~~benefit~~ other consideration to a student-athlete
7 before signing an agency contract with the student-athlete; or

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

10 (b) An athlete agent may not:

11 (1) predate or postdate any agency contract, professional_sports-services
12 contract, or endorsement contract;

13 (2) ~~do business~~ engage in conduct as an athlete agent without complying with
14 this [Act];

15 (3) initiate contact with a student-athlete ~~before being~~ unless registered under
16 this [Act];or

17 (4) refuse or willfully fail to maintain or permit inspection of the records
18 required by Section ~~16~~ 16.

19 **SECTION ~~16~~ 16. RECORDKEEPING.**

20 (a) An athlete agent shall maintain at the athlete agent's place of business for five
21 years a copy of any agency contract entered into between the athlete agent and a student-
22 athlete ~~for a period of five years~~.

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

3
4 **SECTION ~~117~~ 17. CIVIL REMEDIES.**

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

7 (a) An educational institution has a cause of action for damages caused by a
8 violation of this act by an athlete agent. In an action under this section, an educational
9 institution may also recover costs and reasonable attorney's fees.

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

15 (c) This [Act] does not restrict rights, remedies, or defenses under ~~the common~~
16 law or equity.

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

20 **Reporter's Notes**

21 The purpose of this section is to give a cause of action to an educational institution
22 that is sanctioned as a consequence of activities of an athlete agent. For example, in the
23 circumstance where an athlete agent enters into an agency contract with a student-athlete
24 and fails to notify the institution within 72 hours or prior to the next participation by the

1 student-athlete and the institution is disqualified from post-season participation because
2 of that, it is the Committee's intention to create a cause of action for the resulting loss of
3 revenue. Subsection (c) makes clear the cause of action is not the exclusive cause of
4 action or source of damages that may be available.

5 **SECTION ~~118~~ 18. ADMINISTRATIVE PENALTY.** The [Secretary of State]
6 may assess a civil penalty not to exceed [\$25,000] for a violation of this [Act].

7 **Reporter's Notes**

8 The procedure for imposing the penalty and due process procedures are left to the
9 adopting State's administrative procedure law.

10

11 **SECTION ~~119~~ 19. CRIMINAL PENALTY.**

12 [(a)] The commission of any act prohibited under Section ~~115~~ 15(a) or (b)(4) by
13 an athlete agent is a [misdemeanor][felony] punishable by [] and revocation
14 of the license of the athlete agent.

15 [(b)] A violation of Section 13(b) by a student-athlete is a [misdemeanor]
16 punishable by [_____].

Reporter's Notes

17 The Committee recognizes that criminalizing the conduct in Section ~~115~~ 15(a) raises
18 questions about interfering in legitimate contracts wherein a student-athlete, such as a
19 football or basketball player who wants to forego some portion of their eligibility,
20 knowingly signs a contract with an agent that will terminate his or her collegiate
21 eligibility. However, it was felt that the large number of times when the inducements
22 were improperly used justified the restriction, particularly when a prohibited inducement
23 could be given after signing the contract.
24

25 **SECTION ~~120~~ 20. APPLICATION AND CONSTRUCTION.** In applying and
26 construing this Uniform Act, consideration must be given to the need to promote
27 uniformity of the law with respect to ~~the its~~ its subject matter ~~of this [Act]~~ among States

1 ~~enacting~~ that enact it.

2 **SECTION ~~121~~ 21. SEVERABILITY.** If any provision of this [Act] or its
3 application to any person or circumstance is held invalid, the invalidity does not affect
4 other provisions or applications of this [Act] which can be given effect without the
5 invalid provision or application, and to this end the provisions of this [Act] are severable.

6 **SECTION ~~122~~ 22. REPEALS.** The following acts and parts of acts are hereby
7 repealed:

8 **SECTION ~~123~~ 23. EFFECTIVE DATE.** This [Act] takes effect _____.