UNIFORM ATHLETE AGENTS ACT

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

MEETING IN ITS ONE-HUNDRED-AND-EIGHTH YEAR
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JULY 23 – 30, 1999

UNIFORM ATHLETE AGENTS ACT

WITH PREFATORY NOTE AND REPORTER’S NOTES

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NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

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## UNIFORM ATHLETE AGENTS ACT

### TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>101</td>
<td>SHORT TITLE</td>
<td>2</td>
</tr>
<tr>
<td>102</td>
<td>DEFINITIONS</td>
<td>2</td>
</tr>
<tr>
<td>103</td>
<td>ADMINISTRATION</td>
<td>4</td>
</tr>
<tr>
<td>104</td>
<td>ATHLETE AGENTS: REGISTRATION REQUIRED</td>
<td>4</td>
</tr>
<tr>
<td>105</td>
<td>REGISTRATION AS ATHLETE AGENT</td>
<td>5</td>
</tr>
<tr>
<td>106</td>
<td>ISSUANCE, DENIAL, SUSPENSION, REVOCATION OF, OR REFUSAL TO RENEW CERTIFICATE OF REGISTRATION</td>
<td>8</td>
</tr>
<tr>
<td>107</td>
<td>RENEWAL</td>
<td>10</td>
</tr>
<tr>
<td>108</td>
<td>SUSPENSION, REVOCATION, OR REFUSAL TO RENEW REGISTRATION</td>
<td>10</td>
</tr>
<tr>
<td>109</td>
<td>TEMPORARY REGISTRATION</td>
<td>11</td>
</tr>
<tr>
<td>110</td>
<td>REGISTRATION FEE</td>
<td>11</td>
</tr>
<tr>
<td>111</td>
<td>LIABILITY INSURANCE</td>
<td>11</td>
</tr>
<tr>
<td>112</td>
<td>FORM OF CONTRACT</td>
<td>12</td>
</tr>
<tr>
<td>113</td>
<td>NOTICE TO EDUCATIONAL INSTITUTION</td>
<td>14</td>
</tr>
<tr>
<td>114</td>
<td>STUDENT-ATHLETE’S RIGHT TO CANCEL</td>
<td>14</td>
</tr>
<tr>
<td>115</td>
<td>PROHIBITED ACTS</td>
<td>15</td>
</tr>
<tr>
<td>116</td>
<td>RECORDKEEPING</td>
<td>15</td>
</tr>
<tr>
<td>117</td>
<td>CIVIL REMEDIES</td>
<td>16</td>
</tr>
<tr>
<td>118</td>
<td>ADMINISTRATIVE PENALTY</td>
<td>17</td>
</tr>
<tr>
<td>119</td>
<td>CRIMINAL PENALTY</td>
<td>17</td>
</tr>
<tr>
<td>120</td>
<td>APPLICATION AND CONSTRUCTION</td>
<td>17</td>
</tr>
<tr>
<td>121</td>
<td>SEVERABILITY</td>
<td>17</td>
</tr>
<tr>
<td>122</td>
<td>REPEALS</td>
<td>18</td>
</tr>
<tr>
<td>123</td>
<td>EFFECTIVE DATE</td>
<td>18</td>
</tr>
</tbody>
</table>
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 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 1995 at least 27 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.
UNIFORM ATHLETE AGENTS ACT

SECTION 101. 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 8]; and Washington [Section 18.175.010. et. seq., Washington Business and Professions Code].

SECTION 102. DEFINITIONS. In this [Act]:

(1) “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 organization or an individual acting solely for his or her spouse, child, grandchild, or ward.

(2) “Agency contract” means an agreement in which a student-athlete authorizes a person to negotiate or solicit on behalf of the student-athlete a professional sports-services contract or an endorsement contract.
(3) “Athletic director” means an individual responsible for administering the overall athletic program of an educational institution.

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

(5) “Endorsement contract” means a contract under which a student-athlete is employed or receives remuneration to utilize on behalf of the other contracting party any value or utility that the student-athlete may have because of publicity, reputation, following, or fame obtained because of athletic ability or performance.

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

(7) “Professional sports-services contract” means a contract under which a student-athlete is employed or agrees to render services as a player on a professional sports team or organization or as a professional athlete.

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

(9) “State” means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
(10) “Student-athlete” means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport. An individual is not a student-athlete if the individual is ineligible to participate in a particular sport unless:

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

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

**Reporter’s Notes**

In paragraph (1), the definition of “athlete agent” is limited to individuals, i.e., a corporation that employs athlete agents would not be required to register as an athlete agent but the individuals would. The term includes not only an individual who enters into an agency contract with a student-athlete but also the “runners” agents use to recruit the student-athlete to sign with a particular agent. The Drafting Committee considered and decided against exclusions for individuals otherwise licensed by the State, such as attorneys.

In paragraph (10), “student-athlete” is defined to allow the Act to apply to a two-sport athlete who has signed a professional contract in one sport but has eligibility remaining in another sport. It is also defined to include individuals who are not yet in college or even eligible for college in an attempt to prevent agents from inducing high school students to jeopardize their college eligibility.

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

**SECTION 104. ATHLETE AGENTS: REGISTRATION REQUIRED.**
(a) Except as otherwise provided in subsection (b), an individual may not act as an athlete agent in this State, or contact a student-athlete who is attending or has expressed a written intention to attend an educational institution in this State, before registering with the [Secretary of State].

(b) An individual who is not registered as an athlete agent in this State may contact a student-athlete if:

(1) the student-athlete or an individual on behalf of the student-athlete initiates communication with the individual; and

(2) within seven days after the contact made by the individual in response to the student-athlete’s initiation of communication, the individual files an application to register as an athlete agent in this State.

(c) An agency contract resulting from an act in violation of this section is void and no individual owes any money or other consideration under the contract. The athlete agent shall return any money or other consideration received under the contract.

Reporter’s Notes

In subsection (b), the Committee intended to allow an individual to respond to inquiries before being required to register as an athlete agent.

In subsection (c), the intention of the Drafting Committee was to discourage inappropriate contacts by making any resulting agency contract void and allowing a student-athlete to keep any inducement given to him or her to enter into the void contract.

SECTION 105. REGISTRATION AS ATHLETE AGENT.
(a) An applicant for registration as an athlete agent shall submit a written application for registration to the [Secretary of State] on a form prescribed by the [Secretary of State]. Except as otherwise provided in subsection (b), the application must state or contain:

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

   (2) the name of the applicant’s firm or employer;

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

   (4) a description of the applicant’s:

       (A) formal training;

       (B) practical experience; and

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

   (5) the names and addresses of three individuals who can provide references;

   (6) the name, sport, and last known team of all individuals represented by the applicant as an athlete agent during the five years next preceding the date of submission of the application;

   (7) the names and addresses of all persons who have a financial interest in the operation of the business of the applicant as an athlete agent including partners, associates, or profit-sharers, but not including employees on fixed salaries;
(8) any crime, other than a minor traffic offense, of which the applicant has been convicted;

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

(10) any instance in which the actions of the applicant resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or educational institution;

(11) any sanction or disciplinary action taken against the applicant arising out of misconduct in his or her occupation or profession;

(12) any denial of an application or suspension, revocation, or refusal to renew the applicant’s registration as an athlete agent in any State; and

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

(b) An individual who has filed an application to be an athlete agent in another State, in lieu of filing an application in this State, may file a copy of the application from the other State. The [Secretary of State] shall accept the application from the other State as an application for registration in this State if the application from the other State:

(1) was filed in the other State within the next preceding six months or the applicant certifies the information contained in the application is current; and

(2) contains information substantially similar to or more detailed than that required in an application filed in this State.
Reporter’s Notes

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

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

SECTION 106. ISSUANCE, DENIAL, SUSPENSION, REVOCATION OF, OR REFUSAL TO RENEW CERTIFICATE OF REGISTRATION.

(a) The [Secretary of State] shall issue a certificate of registration to an individual who has complied with Section 105(b) and submits satisfactory proof that the individual is licensed or registered in the State in which the application submitted pursuant to Section 105(b) was filed and the [Secretary of State] determines the requirements for licensure or registration in the other State are substantially similar to or more stringent than those of this State.

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

(c) The [Secretary of State] may refuse to issue a certificate of registration if the [Secretary of State] determines that the applicant has engaged in conduct that has a significant adverse impact on the applicant’s credibility, honesty, or integrity and ability to serve as an athlete agent. In making the determination, the [Secretary of State] may consider whether the applicant has:
(1) been convicted of a crime which, if committed in this State, would be a felony or a misdemeanor involving moral turpitude;

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

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

(4) committed any act prohibited by Section 115;

(5) had a registration suspended, revoked, or denied or been refused renewal of registration in any State; or

(6) taken action that resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or educational institution.

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

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

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

(3) any activity of the applicant since the conduct which demonstrates that the conduct is unlikely to recur.

**Reporter’s Notes**

The intention of subsections (c) and (d) is not to have certain conduct automatically disqualify an individual from registration, but to allow the licensing agency to make a qualitative determination of the likelihood the individual, if registered, would engage in conduct detrimental to a student-athlete or an education institution, or both.
SECTION 107. RENEWAL.

(a) An athlete agent may apply to renew a registration by filing an application for renewal in a form prescribed by the [Secretary of State].

(b) An individual who has filed an application for renewal in another State, in lieu of filing an application for renewal in this State, may file a copy of the application for renewal from the other State.

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

(1) the application from the other State was filed in the other State within the next preceding six months or the applicant certifies the information contained in the application is current; and

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

Reporter’s Notes

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

SECTION 108. SUSPENSION, REVOCATION, OR REFUSAL TO RENEW REGISTRATION. The [Secretary of State] may suspend, revoke, or refuse to renew a registration for any reason that would have justified denial of a registration under Section 106(c).
SECTION 109. TEMPORARY REGISTRATION. The [Secretary of State] may issue a temporary certificate of registration while considering an application for registration or renewal.

SECTION 110. REGISTRATION FEE. An application for registration or renewal of registration must be accompanied by a fee in the following amount:

1. [$] for an initial application for registration;
2. [$] for an application for registration based upon a certificate of registration issued by another State;
3. [$] for an application for renewal of registration; or
4. [$] for an application for renewal based upon an application for renewal filed in another State.

Reporter’s Notes

Although the question is one for each State to determine for itself, the Committee felt that most States would be inclined to set fees in amounts to recover the costs of registration. In that case, a registration or renewal fee based on a registration or renewal in another State ought to be less than a registration or renewal fee where the registering State was required to evaluate the application rather than determine whether one had been issued in another State and the status of that State’s law on athlete agents.

SECTION 111. LIABILITY INSURANCE.

(a) An application for registration must be accompanied by evidence of errors and omissions liability insurance applicable to the activities of an athlete agent in the amount of [($100,000)] or equivalent security.
(b) If an athlete agent fails to provide evidence of errors and omissions liability insurance or equivalent security to the [Secretary of State] within 30 days after receipt of a notice of cancellation issued by an insurer, the [Secretary of State] shall suspend the certificate of registration issued to that athlete agent until the athlete agent provides evidence of errors and omissions liability insurance or equivalent security.]

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

SECTION 112. FORM OF CONTRACT.

(a) An agency contract must be in writing, signed by the student-athlete and, if the student-athlete is a minor, by a parent or guardian of the student-athlete, and a copy must be furnished to the student-athlete at the time of signing.

(b) An agency contract must state or contain:

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

(2) the name of any person not listed in the application for registration who will receive any portion of the compensation;
(3) a description of any expenses that the student-athlete agrees to reimburse;

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

and

(5) the duration of the contract.

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

WARNING TO STUDENT-ATHLETE

IF YOU SIGN THIS CONTRACT, YOU WILL LOSE YOUR ELIGIBILITY TO COMPETE IN YOUR SPORT. BOTH YOU AND YOUR ATHLETE AGENT ARE REQUIRED TO TELL YOUR ATHLETIC DIRECTOR IF YOU SIGN THIS CONTRACT. IF YOU SIGN, YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THE CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.

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

**Reporters’ Notes**

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

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

**SECTION 113. NOTICE TO EDUCATIONAL INSTITUTION.**

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

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

**SECTION 114. STUDENT-ATHLETE’S RIGHT TO CANCEL.**

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

(b) A student-athlete may not waive the right to cancel an agency contract.
(c) If a student-athlete cancels an agency contract, the student-athlete is not obligated to pay any consideration to the athlete agent and the student-athlete is not required to return anything of value received from the agent to induce the signing of the contract.

SECTION 115. PROHIBITED ACTS.

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

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

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

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

(b) An athlete agent may not:

(1) postdate any agency contract, professional sports-services contract, or endorsement contract;

(2) do business as an athlete agent without complying with this [Act];

(3) contact a student-athlete before being registered under this [Act]; or

(4) refuse or wilfully fail to maintain or permit inspection of the records required by Section 116.
SECTION 116. RECORDKEEPING.

(a) An athlete agent shall maintain a copy of any agency contract entered into between the athlete agent and a student-athlete for a period of five years.

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

SECTION 117. CIVIL REMEDIES.

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

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

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

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

Reporter’s Notes

The purpose of this section is to give a cause of action to an educational institution that is sanctioned as a consequence of activities of an athlete agent. For example, in the circumstance where an athlete agent enters into an agency contract with a student-athlete and fails to notify the institution within 72 hours or prior to
the next participation by the student-athlete and the institution is disqualified from
post-season participation because of that, it is the Committee’s intention to create a
cause of action for the resulting loss of revenue.

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

SECTION 119. CRIMINAL PENALTY. The commission of any act
prohibited under Section 115(a) or (b)(4) by an athlete agent is a [misdemeanor]
[felony] punishable by [ ].

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

SECTION 120. APPLICATION AND CONSTRUCTION. In applying and
construing this Uniform Act, consideration must be given to the need to promote
uniformity of the law with respect to the subject matter of this [Act] among States
enacting it.

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

SECTION 122. REPEALS. The following acts and parts of acts are hereby repealed:

SECTION 123. EFFECTIVE DATE. This [Act] takes effect ____________.