

D R A F T
FOR DISCUSSION ONLY

UNIFORM ATHLETE AGENTS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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

UNIFORM ATHLETE AGENTS ACT

WITH PREFATORY NOTE AND REPORTER'S NOTES

Copyright© 1999
By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter's notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not necessarily reflect the views of the Conference and its Commissioners and the Drafting

Committee and its Members and Reporters. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.

DRAFTING COMMITTEE ON UNIFORM ATHLETE AGENTS ACT

RICHARD C. HITE, Suite 600, 200 W. Douglas Avenue, Wichita, KS 67202, *Chair*
JERRY L. BASSETT, Legislative Reference Service, 613 Alabama State House, 11 S. Union Street,
Montgomery, AL 36130
TERESA ANN BECK, House Legislative Services Office, P.O. Box 1018, Jackson, MS 39215
ROBERT N. DAVIS, University of Mississippi, School of Law, University, MS 38677, *National
Conference Reporter*
CHARLES W. EHRHARDT, Florida State University, College of Law, 425 W. Jefferson Street,
Tallahassee, FL 32306
THOMAS L. JONES, University of Alabama School of Law, University Station, P.O. Box 865557,
Tuscaloosa, AL 35486-0050
JOSHUA M. MORSE, III, Florida State University, College of Law, Tallahassee, FL 32306
HARVEY S. PERLMAN, University of Nebraska, College of Law, P.O. Box 830902, Lincoln,
NE 68583
FREDERICK P. STAMP, JR., U.S. District Court, P.O. Box 791, Wheeling, WV 26003
HARRY M. WALSH, 456 Summit Avenue, # 206, St. Paul, MN 55102
HARRY WIGGINS, Missouri Senate, Room 423, State Capitol, Jefferson City, MO 65101

EX OFFICIO

GENE N. LEBRUN, P.O. Box 8250, 9th Floor, 909 St. Joseph Street, Rapid City, SD 57709, *President*
SCOTT N. HEIDPRIEM, 431 N. Phillips Avenue, Suite 400, Sioux Falls, SD 57104, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISORS

DAVID E. CARDWELL, 200 South Orange Avenue, P.O. Box 1526, Orlando, FL 32801, *State & Local
Government Law Section Advisor*
RODNEY K. SMITH, Capital University Law School, Columbus, OH 43215, *Advisor*

EXECUTIVE DIRECTOR

FRED H. MILLER, University of Oklahoma, College of Law, 300 Timberdell Road, Norman,
OK 73019, *Executive Director*
WILLIAM J. PIERCE, 1505 Roxbury Road, Ann Arbor, MI 48104, *Executive Director Emeritus*

Copies of this Act may be obtained from:
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
211 E. Ontario Street, Suite 1300

Chicago, Illinois 60611
312/915-0195

UNIFORM ATHLETE AGENTS ACT

TABLE OF CONTENTS

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

1

UNIFORM ATHLETE AGENTS ACT

2

PREFATORY NOTE

3

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.

4

5

6

7

8

9

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.

10

11

12

13

14

15

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.

16

17

18

19

20

21

22

23

24

25

26

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.

27

28

29

30

31

32

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 8871, Vernon’s Texas Code Annotated]; 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.

1 (3) “Athletic director” means an individual responsible for administering the
2 overall athletic program of an educational institution.

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

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

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

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

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

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

1 (10) “Student-athlete” means an individual who engages in, is eligible to
2 engage in, or may be eligible in the future to engage in, any intercollegiate sport.

3 An individual is not a student-athlete if the individual is ineligible to
4 participate in a particular sport unless:

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

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

10 **Reporter’s Notes**

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

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

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

25 **SECTION 104. ATHLETE AGENTS: REGISTRATION REQUIRED.**

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

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

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

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

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

11 (A) formal training;

12 (B) practical experience; and

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

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

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

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

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

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

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

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

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

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

14 (b) An individual who has filed an application to be an athlete agent in
15 another State, in lieu of filing an application in this State, may file a copy of the
16 application from the other State.

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

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

21 (2) contains information substantially similar to or more detailed than
22 that required in an application filed in this State.

1 **Reporter’s Notes**

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

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

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

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

16 (b) Except as otherwise provided in subsection (c), the [Secretary of State]
17 shall issue a certificate of registration to an individual who complies with Section
18 105(a).

19 (c) The [Secretary of State] may refuse to issue a certificate of registration
20 if the [Secretary of State] determines that the applicant has engaged in conduct that
21 has a significant adverse impact on the applicant’s credibility, honesty, or integrity
22 and ability to serve as an athlete agent. In making the determination, the [Secretary
23 of State] may consider whether the applicant has:

- 1 (1) been convicted of a crime which, if committed in this State, would be
2 a felony or a misdemeanor involving moral turpitude;
- 3 (2) knowingly made a materially false, misleading, deceptive, or
4 fraudulent representation as an athlete agent or in the application;
- 5 (3) engaged in acts that would disqualify the applicant from serving in a
6 fiduciary capacity;
- 7 (4) committed any act prohibited by Section 115;
- 8 (5) had a registration suspended, revoked, or denied or been refused
9 renewal of registration in any State; or
- 10 (6) taken action that resulted in the imposition of a sanction, suspension,
11 or declaration of ineligibility to participate in an interscholastic or intercollegiate
12 athletic event on a student-athlete or educational institution.

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

- 15 (1) the period between the conduct and the application;
- 16 (2) the nature of the conduct and the context in which it occurred; and
- 17 (3) any activity of the applicant since the conduct which demonstrates
18 that the conduct is unlikely to recur.

19 **Reporter's Notes**

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

1 (b) If an athlete agent fails to provide evidence of errors and omissions
2 liability insurance or equivalent security to the [Secretary of State] within 30 days
3 after receipt of a notice of cancellation issued by an insurer, the [Secretary of State]
4 shall suspend the certificate of registration issued to that athlete agent until the
5 athlete agent provides evidence of errors and omissions liability insurance or
6 equivalent security.]

7 **Reporter's Notes**

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

13 **SECTION 112. FORM OF CONTRACT.**

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

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

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

23 (2) the name of any person not listed in the application for registration
24 who will receive any portion of the compensation;

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

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

5 (5) the duration of the contract.

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

8 **WARNING TO STUDENT-ATHLETE**
9 **IF YOU SIGN THIS CONTRACT, YOU WILL LOSE YOUR ELIGIBILITY**
10 **TO COMPETE IN YOUR SPORT. BOTH YOU AND YOUR ATHLETE**
11 **AGENT ARE REQUIRED TO TELL YOUR ATHLETIC DIRECTOR IF YOU**
12 **SIGN THIS CONTRACT. IF YOU SIGN, YOU MAY CANCEL THIS**
13 **CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF**
14 **THE CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.**

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

17 **Reporter's Notes**

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

23 In subsection (d), the Committee felt that since the student-athlete loses
24 eligibility when an agency contract is signed, a contract that does not comply with
25 this section ought to give the student-athlete the benefit of his or her bargain and
26 therefore should be voidable at the option of the student-athlete. The student-

1 athlete would exercise this option under Section 114 and would be entitled to keep
2 any inducements received from the agent. This should be contrasted with an agency
3 contract with an individual required to register as an athlete agent but who did not.
4 In that case, the Committee felt the student-athlete should not be able, in effect, to
5 ratify an unlawful agreement.

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

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

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

18 **SECTION 114. STUDENT-ATHLETE'S RIGHT TO CANCEL.**

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

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

1 (c) If a student-athlete cancels an agency contract, the student-athlete is not
2 obligated to pay any consideration to the athlete agent and the student-athlete is not
3 required to return anything of value received from the agent to induce the signing of
4 the contract.

5 **SECTION 115. PROHIBITED ACTS.**

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

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

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

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

14 (b) An athlete agent may not:

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

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

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

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

1 the next participation by the student-athlete and the institution is disqualified from
2 post-season participation because of that, it is the Committee's intention to create a
3 cause of action for the resulting loss of revenue.

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

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

9 **Reporter's Notes**

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

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

21 **SECTION 121. SEVERABILITY.** If any provision of this [Act] or its
22 application to any person or circumstance is held invalid, the invalidity does not
23 affect other provisions or applications of this [Act] which can be given effect

1 without the invalid provision or application, and to this end the provisions of this
2 [Act] are severable.

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

5 **SECTION 123. EFFECTIVE DATE.** This [Act] takes effect _____.