

UNIFORM ATHLETE AGENTS ACT (2000)

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-NINTH YEAR
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WITH PREFATORY NOTE AND COMMENTS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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UNIFORM ATHLETE AGENTS ACT (2000)

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UNIFORM ATHLETE AGENTS ACT (2000)

PREFATORY NOTE

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

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

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

Because of the lack of uniformity and lack of reciprocity provisions in existing statutes, the NCAA and several universities asked the Conference to undertake the drafting of a Uniform Act. After initial reluctance because of the state of its agenda, budgetary considerations and uncertainty that a Uniform Act in this area of the law conform to established criteria for undertaking drafting efforts, the Conference agreed to do so. The Drafting Committee met over a period of three years and had valuable input from athlete agents, coaches, individuals responsible for administering existing acts, and

representatives of the players associations of the National Football League, the National Hockey League, major league baseball and the NCAA.

Many of the provisions in the Uniform Athlete Agents Act are similar or even identical to provisions found in some of the existing acts. The Uniform Act follows the majority of States which have required registration of athlete agents. Registration is required before initiating contact with a student-athlete to induce the signing of an agency contract. If the student-athlete initiates contact with an athlete agent, the athlete agent must apply for registration within seven days after commencing any effort to induce the student-athlete to enter into an agency contract. The act includes a list of disclosures which must be made in the application for registration. It also includes a list of factors the administrator of the act must consider and a list of factors the administrator may consider in determining whether to issue a certificate of registration or suspend, revoke or refuse to renew a registration. The act specifies terms which must be included in an agency contract, requirements of notice to educational institutions after an agency contract has been entered into, the right of the student-athlete to cancel an agency contract within fourteen days after it is signed, and records which must be retained by the athlete agent. Enforcement of the act is provided for by sections which prohibit certain conduct and impose criminal and administrative penalties. The act also provides that an educational institution has civil remedies against either an athlete agent or a former student-athlete for damages caused by violation of the act.

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

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

UNIFORM ATHLETE AGENTS ACT (2000)

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

Comment

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

SECTION 2. DEFINITIONS. In this [Act]:

(1) “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.

(2) “Athlete agent” means an individual who enters into an agency contract with a student-athlete or, directly or indirectly, recruits or solicits a student-athlete to enter into an agency contract. The term includes an individual who represents to the public that the individual is an athlete agent. The term does not include a spouse, parent, sibling, [or] grandparent[, or guardian] of the student-athlete or an individual acting solely on behalf of a professional sports team or professional sports organization.

(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 athletic programs for male students and female students, the athletic program for males or the athletic program for females, as appropriate.

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

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

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

(7) “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.

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

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

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

(11) “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.

(12) “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. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student-athlete for purposes of that sport.

Comment

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

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

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

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

SECTION 3. SERVICE OF PROCESS; SUBPOENAS.

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

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

Comment

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

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

SECTION 4. ATHLETE AGENTS: REGISTRATION REQUIRED; VOID CONTRACTS.

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

(b) Before being issued a certificate of registration, an individual may act as an athlete agent in this State for all purposes except signing an agency contract, if:

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

(2) within seven days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in this State.

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

Comment

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

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

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

**SECTION 5. REGISTRATION AS ATHLETE AGENT; FORM;
REQUIREMENTS.**

(a) An applicant for registration shall submit an application for registration to the [Secretary of State] in a form prescribed by the [Secretary of State]. [An application filed under this section is a public record.] The application must be in the name of an individual and, except as otherwise provided in subsection (b), signed or otherwise authenticated by the applicant under penalty of perjury and 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 business or employer, if applicable;
- (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 as an athlete agent;
 - (B) practical experience as an athlete agent; and
 - (C) educational background relating to the applicant's activities as an athlete agent;

(5) the names and addresses of three individuals not related to the applicant who are willing to serve as references;

(6) the name, sport, and last known team for each individual for whom the applicant acted 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 are:

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

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

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

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

(10) any instance in which the conduct of the applicant or any person named pursuant to paragraph (7) 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, suspension, or disciplinary action taken against the applicant or any person named pursuant to paragraph (7) arising out of occupational or professional conduct; and

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

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

(1) was submitted in the other State within six months next preceding the submission of the application in this State and the applicant certifies that the information contained in the application is current;

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

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

Comment

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

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

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

SECTION 6. CERTIFICATE OF REGISTRATION; ISSUANCE OR DENIAL; RENEWAL.

(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).

(b) 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 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:

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

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

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

(4) engaged in conduct prohibited by Section 14;

(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;

(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

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

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

(1) how recently the conduct occurred;

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

(3) any other relevant conduct of the applicant.

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

(e) An individual who has submitted an application for renewal of registration or licensure in another State, in lieu of submitting an application for renewal in the form prescribed pursuant to subsection (d), may file a copy of the application for renewal and a valid certificate of registration or licensure 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 the application to the other State:

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

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

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

(f) A certificate of registration or a renewal of a registration is valid for [two] years.

Comment

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

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

**SECTION 7. SUSPENSION, REVOCATION, OR REFUSAL TO RENEW
REGISTRATION.**

[(a)] The [Secretary of State] may suspend, revoke, or refuse to renew a registration for conduct that would have justified denial of registration under Section 6(b).

[(b)] The [Secretary of State] may deny, suspend, revoke, or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing. The [Administrative Procedures Act] applies to this [Act].]

Comment

By reference to Section 6(b), this section permits the Secretary of State to consider, among other things, actions in another State to suspend, revoke, or refuse to renew registration.

“Administrative Procedures Act” is bracketed because some States may refer to laws relating to due process in administrative procedures by another name.

SECTION 8. TEMPORARY REGISTRATION. The [Secretary of State] may issue a temporary certificate of registration while an application for registration or renewal of registration is pending.

Comment

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

SECTION 9. REGISTRATION AND RENEWAL FEES. 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 or licensure issued by another State;
- (3) [\$] for an application for renewal of registration; or
- (4) [\$] for an application for renewal of registration based upon an application for renewal of registration or licensure submitted in another State.

Comment

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

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

SECTION 10. REQUIRED FORM OF CONTRACT.

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

(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 or will receive from any other source for entering into the contract or for providing the services;

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

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

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

(5) the duration of the contract; and

(6) the date of execution.

(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:

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

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

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

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

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

Comment

This section is intended to provide protection to the student-athlete by requiring a form of agency contract similar to those required in some consumer transactions. The Drafting Committee preferred to require that agency contracts be in traditional written

form. However, the adoption of the Electronic Signatures in Global and National Commerce Act (see Section 19) eliminated that option.

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

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

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

SECTION 11. NOTICE TO EDUCATIONAL INSTITUTION.

(a) Within 72 hours after entering into an agency contract or before the next scheduled athletic event in which the student-athlete may participate, whichever occurs first, the athlete agent shall give notice in a record 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 next athletic event in which the student-athlete may participate, 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.

Comment

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

SECTION 12. STUDENT-ATHLETE'S RIGHT TO CANCEL.

(a) A student-athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record 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 required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

Comment

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

SECTION 13. REQUIRED RECORDS.

(a) An athlete agent shall retain the following records for a period of five years:

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

- (2) any agency contract entered into by the athlete agent; and
- (3) any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract.

(b) Records required by subsection (a) to be retained are open to inspection by the [Secretary of State] during normal business hours.

SECTION 14. PROHIBITED CONDUCT.

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

- (1) give any materially false or misleading information or make a materially false promise or representation;
- (2) furnish anything of value to a student-athlete before the student-athlete enters into the agency contract; or
- (3) furnish anything of value to any individual other than the student-athlete or another registered athlete agent.

(b) An athlete agent may not intentionally:

- (1) initiate contact with a student-athlete unless registered under this [Act];
- (2) refuse or fail to retain or permit inspection of the records required to be retained by Section 13;
- (3) fail to register when required by Section 4;

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

(5) predate or postdate an agency contract; or

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

Comment

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

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

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

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

Comment

The extent of the criminal penalties which may be imposed for violation of the act are left to the States adopting the act because of a wide variation in the criminal penalties provided for by existing acts. Variations in the criminal penalties which may be imposed would not detract from the otherwise uniform and reciprocal provisions of the act. Some

potential criminal penalty is necessary to discourage those individuals who are willing to engage in improper or illegal conduct because of the size of the monetary stakes in the contemporary professional sports world.

SECTION 16. CIVIL REMEDIES.

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

(b) Damages of an educational institution under subsection (a) include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student-athlete, the educational institution was injured by a violation of this [Act] or 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 taken to mitigate sanctions likely to be imposed by such an organization.

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

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

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

Comment

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

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

SECTION 17. ADMINISTRATIVE PENALTY. The [Secretary of State] may assess a civil penalty against an athlete agent not to exceed [\$25,000] for a violation of this [Act].

Comment

The procedure for imposing an administrative penalty and complying with due process requirements are left to the adopting State's administrative procedures law.

SECTION 18. UNIFORMITY OF 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 its subject matter among States that enact it.

SECTION 19. ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. The provisions of this [Act] governing the legal

effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000), and supersede, modify, and limit the Electronic Signatures in Global and National Commerce Act.

Comment

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

SECTION 20. 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 21. REPEALS. The following acts and parts of acts are hereby repealed:

SECTION 22. EFFECTIVE DATE. This [Act] takes effect _____.