



SPONSOR: Sen. Sokola & Rep. Wagner

DELAWARE STATE SENATE

141st GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1

FOR

SENATE BILL NO. 141

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO PROFESSIONS AND OCCUPATIONS AND CREATING THE DELAWARE UNIFORM ATHLETE AGENTS ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend Title 24 of the Delaware Code by adding the following chapter:

"Chapter 54. Delaware Uniform Athlete Agents Act.

§ 5401. Short title.

This chapter may be cited as the Delaware Uniform Athlete Agents Act.

§ 5402. Definitions.

For purposes of this chapter:

(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, 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) 'Board' means the Board of Athlete Agent Examiners described in Section 5403 of this chapter.

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

(6) '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.

(7) '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.

(8) '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.

(9) '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.

(10) '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.

(11) 'Registration' means registration as an athlete agent pursuant to this chapter.

(12) '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.

(13) '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.

§ 5403. Board of Athlete Agent Examiners; appointments; qualifications; term; vacancies; suspension or removal; compensation; meetings; quorum.

- (a) The Board of Athlete Agent Examiners shall consist of 5 members appointed by the Governor. To serve on the Board, a public member shall not be, nor ever have been, an athlete agent, a close relative (as defined in Section 5804(1) of Title 29) of an athlete agent, or ever been employed by an athlete agent.
- (b) Each member shall serve for a period of 3 years, and may succeed himself or herself for 1 additional term; provided, however, that where a member was initially appointed to fill a vacancy, such member may succeed himself or herself for only 1 additional full term. Any person appointed to fill a vacancy on the Board shall hold office for the remainder of the unexpired term of the former member. Each term of office shall expire on the date specified in the appointment, except that each member shall serve until a successor is duly appointed.
- (c) A person who has never served on the Board may be appointed to the Board 2 consecutive times; but, no such person shall thereafter be eligible for 2 consecutive appointments. No person who has been twice appointed to the Board, or who has served on the Board for 6 years within any 9 year period, shall again be appointed to the Board until an interim period of at least 1 term has expired since such person last served.
- (d) A member of the Board shall be suspended or removed by the Governor for misfeasance, nonfeasance, malfeasance, or neglect of duty. A member subject to disciplinary proceedings shall be disqualified from Board business until the charge is adjudicated, or the matter is otherwise concluded. A Board member may appeal any suspension or removal to the Superior Court.
- (e) The provisions set forth for employees in Chapter 58 of Title 29, shall apply to all members of the Board, and to all agents appointed or otherwise employed by the Board.
- (f) Board members shall be reimbursed for all necessary expenses involved in each meeting, including travel, according to the uniform policy for reimbursement of expenses established by the Division of Professional Regulation; and, in addition, shall receive not more than \$50 for each meeting attended, but not more than \$500 in any calendar year. After 10 meetings have been attended, the member shall not be compensated for any subsequent meetings attended in that year.

(g) In the same month of each year the members shall elect, from among their number, a President, a Vice-President and Secretary. Each officer shall serve for 1 year, and may serve no more than 2 consecutive years in the same office.

(h) The Board shall hold regularly scheduled business meetings at least once in each quarter of a calendar year, and at such other times as the President deems necessary, or at the request of a majority of the Board members.

(i) A majority of members shall constitute a quorum; and no action shall be taken without the affirmative vote of at least 4 members. Any member who fails to attend 3 consecutive meetings, or who fails to attend at least half of all regular business meetings during any calendar year, shall automatically upon such occurrence be deemed to have resigned from office and a replacement shall be appointed.

§ 5404. Service of process; subpoenas.

(a) By acting as an athlete agent in this State, a nonresident individual appoints the Board 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 Board may issue subpoenas for any material that is relevant to the administration of this chapter.

§ 5405. 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 5407 or 5409 of this chapter.

(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.

(3) 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.

§ 5406. Registration as athlete agent; form; requirements.

(a) An applicant for registration shall submit an application for registration to the Board in a form prescribed by the Board. 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, the address of the applicant's principal place of business and the address to which a copy of service of process shall be mailed to it by the Board pursuant to Section 5404;
- (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 Board 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.

§ 5407. Certificate of registration; issuance or denial; renewal.

- (a) Except as otherwise provided in subsection (b), the Board shall issue a certificate of registration to an individual who complies with Section 5406(a) or whose application has been accepted under Section 5406(b) of this chapter.
- (b) The Board may refuse to issue a certificate of registration if the Board 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 Board 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 5414;

- (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 Board 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 Board. 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 Board 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.

§ 5408. Suspension, revocation, or refusal to renew registration.

(a) The Board may suspend, revoke, or refuse to renew a registration for conduct that would have justified denial of registration under Section 5407(b) of this chapter.

(b) The Board 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 provisions of Title 29, Chapter 101 related to administrative procedures shall apply to this chapter.

§ 5409. Temporary registration.

The Division may issue a temporary certificate of registration while an application for registration or renewal of registration is pending.

§ 5410. 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.

§ 5411. 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.

§ 5412. 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.

§ 5413. 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 Board during normal business hours.

§ 5414. 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 chapter;
- (2) refuse or fail to retain or permit inspection of the records required to be retained by Section 5413 of this chapter;
- (3) fail to register when required by Section 5405 of this chapter;
- (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.

§ 5415. Criminal penalties.

An athlete agent who violates Section 5414 of this chapter is guilty of a Class A misdemeanor. Upon the first offense, the athlete agent shall be fined not less than \$500 nor more than \$1,000 for each offense, and in addition, may be imprisoned for not more than one year. For a second or subsequent conviction, the fine shall be not less than \$1,000 nor more than \$2,000 for each offense; and in addition the athlete agent may be imprisoned for not more than one year.

§ 5416. 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 chapter. 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 chapter 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 chapter does not restrict rights, remedies, or defenses of any person under law or equity.

§ 5417. Administrative penalty.

The Board, subject to the provisions of Title 29, Chapter 101 related to administrative procedures, may assess a civil penalty against an athlete agent not to exceed \$25,000 for a violation of this chapter.

§ 5418. Uniformity of application and construction.

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact similar statutes.

§ 5419. Electronic Signatures In Global And National Commerce Act.

The provisions of this chapter 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.

§ 5420. Severability.

302 If any provision of this chapter or its application to any person or circumstance is held invalid, the
303 invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid
304 provision or application, and to this end the provisions of this chapter are severable."

305 Section 2. Amend Section 8807(a) of Title 29 of the Delaware Code by deleting paragraphs (30) and (31) of such
306 Section and inserting the following:

- 307 "(30) Gaming Control Board as set forth in Chapter 15 of Title 28;
308 (31) Board of Plumbing Examiners, as set forth in Chapter 18 of Title 24; and
309 (32) Board of Athlete Agent Examiners as set forth in Chapter 54 of Title 24."

310 Section 3. This Act shall be effective January 1, 2002.

SYNOPSIS

This Act establishes the Delaware Uniform Athlete Agents Act. The Uniform Athlete Agents Act was adopted by the National Conference of Commissioners on Uniform State Laws in 2000. It is designed to require the registration of persons acting as athlete agents in the State of Delaware and prohibit certain conduct. Similar legislation has been enacted in at least nine other states and has been introduced in at least seventeen other states this year as well.

Author: Senator Sokola