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HOUSE BILL 330

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Antonio "Moe" Maestas

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO CONTRACT LAW; ENACTING THE UNIFORM ATHLETE AGENTS
ACT; PROVIDING STANDARDS FOR REPRESENTATION OF STUDENT ATHLETES
BY AGENTS; PRESCRIBING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Uniform Athlete Agents Act".

Section 2. DEFINITIONS.--As used in the Uniform Athlete
Agents Act:

A. "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;

B. "athlete agent" means an individual who enters
into an agency contract with a student athlete or, directly or

1 indirectly, recruits or solicits a student athlete to enter
2 into an agency contract. "Athlete agent" includes an
3 individual who represents to the public that the individual is
4 an athlete agent. "Athlete agent" does not include the spouse,
5 parent, sibling, grandparent or guardian of a student athlete
6 or an individual acting solely on behalf of a professional
7 sports team or professional sports organization;

8 C. "athletic director" means an individual
9 responsible for administering the overall athletic program of
10 an educational institution or, if an educational institution
11 has separately administered athletic programs for male students
12 and female students, the athletic program for males or the
13 athletic program for females, as appropriate;

14 D. "commission" means the New Mexico athletic
15 commission;

16 E. "contact" means a communication, direct or
17 indirect, between an athlete agent and a student athlete, to
18 recruit or solicit the student athlete to enter into an agency
19 contract;

20 F. "endorsement contract" means an agreement under
21 which a student athlete is employed or receives consideration
22 to use on behalf of the other party any value that the student
23 athlete may have because of publicity, reputation, following or
24 fame obtained because of athletic ability or performance;

25 G. "intercollegiate sport" means a sport played at

1 the collegiate level for which eligibility requirements for
2 participation by a student athlete are established by a
3 national association for the promotion or regulation of
4 collegiate athletics;

5 H. "person" means an individual, corporation,
6 business trust, estate, trust, partnership, limited liability
7 company, association, joint venture, government, governmental
8 subdivision, governmental agency, governmental instrumentality,
9 public corporation or any other legal or commercial entity;

10 I. "professional-sports-services contract" means an
11 agreement under which an individual is employed, or agrees to
12 render services, as a player on a professional sports team,
13 with a professional sports organization or as a professional
14 athlete;

15 J. "record" means information that is inscribed on
16 a tangible medium or that is stored in an electronic or other
17 medium and is retrievable in perceivable form;

18 K. "registration" means registration as an athlete
19 agent pursuant to the Uniform Athlete Agents Act;

20 L. "state" means a state of the United States, the
21 District of Columbia, Puerto Rico, the United States Virgin
22 Islands or any territory or insular possession subject to the
23 jurisdiction of the United States; and

24 M. "student athlete" means an individual who
25 engages in, is eligible to engage in, or may be eligible in the

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1 future to engage in, any intercollegiate sport. If an
2 individual is permanently ineligible to participate in a
3 particular intercollegiate sport, the individual is not a
4 student athlete for purposes of that sport.

5 Section 3. SERVICE OF PROCESS--SUBPOENAS.--

6 A. By acting as an athlete agent in this state, a
7 nonresident individual appoints the commission as the
8 individual's agent for service of process in any civil action
9 in this state related to the individual's acting as an athlete
10 agent in this state.

11 B. The commission may issue subpoenas for any
12 material that is relevant to the administration of the Uniform
13 Athlete Agents Act.

14 Section 4. ATHLETE AGENTS--REGISTRATION REQUIRED--VOID
15 CONTRACTS.--

16 A. Except as otherwise provided in Subsection B of
17 this section, an individual shall not act as an athlete agent
18 in this state without holding a certificate of registration
19 pursuant to Section 6 or 8 of the Uniform Athlete Agents Act.

20 B. Before being issued a certificate of
21 registration, an individual may act as an athlete agent in this
22 state for all purposes except signing an agency contract, if:

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

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

4 C. An agency contract resulting from conduct in
5 violation of this section is void and the athlete agent shall
6 return any consideration received under the contract.

7 Section 5. REGISTRATION AS ATHLETE AGENT--FORM--
8 REQUIREMENTS.--

9 A. An applicant for registration shall submit an
10 application for registration to the commission in a form
11 prescribed by the commission. An application filed under this
12 section is a public record. The application shall be in the
13 name of an individual and, except as otherwise provided in
14 Subsection B of this section, shall be signed or otherwise
15 authenticated by the applicant under penalty of perjury and
16 shall state or contain:

17 (1) the name of the applicant and the address
18 of the applicant's principal place of business;

19 (2) the name of the applicant's business or
20 employer, if applicable;

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

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

25 (a) formal training as an athlete agent;

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1 (b) practical experience as an athlete
2 agent; and

3 (c) educational background relating to
4 the applicant's activities as an athlete agent;

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

8 (6) the name, sport and last known team for
9 each individual for whom the applicant acted as an athlete
10 agent during the five years next preceding the date of
11 submission of the application;

12 (7) the names and addresses of all persons who
13 are:

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

18 (b) with respect to a corporation
19 employing the athlete agent, officers, directors and any
20 shareholders of the corporation having an interest of five
21 percent or greater;

22 (8) whether the applicant or any person named
23 pursuant to Paragraph (7) of this subsection has been convicted
24 of a crime that, if committed in this state, would be a crime
25 involving moral turpitude or a felony, and identify the crime;

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1 (9) whether there has been an administrative
2 or judicial determination that the applicant or any person
3 named pursuant to Paragraph (7) of this subsection has made a
4 false, misleading, deceptive or fraudulent representation;

5 (10) any instance in which the conduct of the
6 applicant or any person named pursuant to Paragraph (7) of this
7 subsection resulted in the imposition of a sanction, suspension
8 or declaration of ineligibility to participate in an
9 interscholastic or intercollegiate athletic event on a student
10 athlete or educational institution;

11 (11) any sanction, suspension or disciplinary
12 action taken against the applicant or any person named pursuant
13 to Paragraph (7) of this subsection arising out of occupational
14 or professional conduct; and

15 (12) whether there has been a denial of an
16 application for, suspension or revocation of, or refusal to
17 renew, the registration or licensure of the applicant or any
18 person named pursuant to Paragraph (7) of this subsection as an
19 athlete agent in any state.

20 B. An individual who has submitted an application
21 for, and holds a certificate of, registration or licensure as
22 an athlete agent in another state may submit a copy of the
23 application and certificate in lieu of submitting an
24 application in the form prescribed pursuant to Subsection A of
25 this section. The commission shall accept the application and

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1 the certificate from the other state as an application for
2 registration in this state if the application to the other
3 state:

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

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

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

13 Section 6. CERTIFICATE OF REGISTRATION--ISSUANCE OR
14 DENIAL--RENEWAL.--

15 A. Except as otherwise provided in Subsection B of
16 this section, the commission shall issue a certificate of
17 registration to an individual who complies with Subsection A of
18 Section 5 of the Uniform Athlete Agents Act or whose
19 application has been accepted pursuant to Subsection B of that
20 section.

21 B. The commission may refuse to issue a certificate
22 of registration if the commission determines that the applicant
23 has engaged in conduct that has a significant adverse effect on
24 the applicant's fitness to act as an athlete agent. In making
25 the determination, the commission may consider whether the

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1 applicant has:

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

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

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

10 (4) engaged in conduct prohibited by Section
11 14 of the Uniform Athlete Agents Act;

12 (5) had a registration or licensure as an
13 athlete agent suspended, revoked or denied or was refused
14 renewal of registration or licensure as an athlete agent in any
15 state;

16 (6) engaged in conduct the consequence of
17 which was that a sanction, suspension or declaration of
18 ineligibility to participate in an interscholastic or
19 intercollegiate athletic event was imposed on a student
20 athlete or educational institution; or

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

24 C. In making a determination under Subsection B of
25 this section, the commission shall consider:

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- 1 (1) how recently the conduct occurred;
2 (2) the nature of the conduct and the context
3 in which it occurred; and
4 (3) any other relevant conduct of the
5 applicant.

6 D. An athlete agent may apply to renew a
7 certificate of registration by submitting an application for
8 renewal in a form prescribed by the commission. An application
9 filed under this section is a public record. The application
10 for renewal shall be signed by the applicant under penalty of
11 perjury and shall contain current information on all matters
12 required in an original registration.

13 E. An individual who has submitted an application
14 for renewal of registration or licensure in another state, in
15 lieu of submitting an application for renewal in the form
16 prescribed pursuant to Subsection D of this section, may file a
17 copy of the application for renewal and a valid certificate of
18 registration or licensure from the other state. The commission
19 shall accept the application for renewal from the other state
20 as an application for renewal in this state if the application
21 to the other state:

- 22 (1) was submitted in the other state within
23 six months next preceding the filing in this state and the
24 applicant certifies the information contained in the
25 application for renewal is current;

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

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

6 F. A certificate of registration or a renewal of a
7 certificate of registration is valid for two years.

8 Section 7. SUSPENSION, REVOCATION OR REFUSAL TO RENEW
9 REGISTRATION.--

10 A. The commission may suspend, revoke or refuse to
11 renew a certificate of registration for conduct that would have
12 justified denial of registration pursuant to Subsection B of
13 Section 6 of the Uniform Athlete Agents Act.

14 B. The commission may deny, suspend, revoke or
15 refuse to renew a certificate of registration or licensure only
16 after proper notice and an opportunity for a hearing.

17 Section 8. TEMPORARY REGISTRATION.--The commission may
18 issue a temporary certificate of registration while an
19 application for registration or renewal of registration is
20 pending.

21 Section 9. REGISTRATION AND RENEWAL FEES.--An application
22 for registration or renewal of registration shall be
23 accompanied by a fee in the following amount:

24 A. two hundred fifty dollars (\$250) for an initial
25 application for registration;

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1 B. two hundred dollars (\$200) for an application
2 for registration based upon a certificate of registration or
3 licensure issued by another state;

4 C. two hundred fifty dollars (\$250) for an
5 application for renewal of registration; or

6 D. two hundred dollars (\$200) for an application
7 for renewal of registration based upon an application for
8 renewal of registration or licensure submitted in another
9 state.

10 Section 10. REQUIRED FORM OF CONTRACT.--

11 A. An agency contract shall be in a record, signed
12 or otherwise authenticated by the parties.

13 B. An agency contract shall state or contain:

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

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

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

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

3 (5) the duration of the contract; and

4 (6) the date of execution.

5 C. An agency contract shall contain, in close
6 proximity to the signature of the student athlete, a
7 conspicuous notice in boldface type in capital letters stating:

8 "WARNING TO STUDENT ATHLETE

9 IF YOU SIGN THIS CONTRACT:

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

12 (2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN
13 SEVENTY-TWO HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU
14 AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND

15 (3) YOU MAY CANCEL THIS CONTRACT WITHIN
16 FOURTEEN DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT
17 MAY NOT REINSTATE YOUR ELIGIBILITY.".

18 D. An agency contract that does not conform to this
19 section is voidable by the student athlete. If a student
20 athlete voids an agency contract, the student athlete is not
21 required to pay any consideration under the contract or to
22 return any consideration received from the athlete agent to
23 induce the student athlete to enter into the contract.

24 E. The athlete agent shall give a record of the
25 signed or otherwise authenticated agency contract to the

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1 student athlete at the time of execution.

2 Section 11. NOTICE TO EDUCATIONAL INSTITUTION.--

3 A. Within seventy-two hours after entering into an
4 agency contract or before the next scheduled athletic event in
5 which the student athlete may participate, whichever occurs
6 first, the athlete agent shall give notice in a record of the
7 existence of the contract to the athletic director of the
8 educational institution at which the student athlete is
9 enrolled or the athlete agent has reasonable grounds to believe
10 the student athlete intends to enroll.

11 B. Within seventy-two hours after entering into an
12 agency contract or before the next athletic event in which the
13 student athlete may participate, whichever occurs first, the
14 student athlete shall inform the athletic director of the
15 educational institution at which the student athlete is
16 enrolled that the student athlete has entered into an agency
17 contract.

18 Section 12. STUDENT ATHLETE'S RIGHT TO CANCEL.--

19 A. A student athlete may cancel an agency contract
20 by giving notice of the cancellation to the athlete agent in a
21 record within fourteen days after the contract is signed.

22 B. A student athlete shall not waive the right to
23 cancel an agency contract.

24 C. If a student athlete cancels an agency contract,
25 the student athlete is not required to pay any consideration

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1 under the contract or to return any consideration received from
2 the athlete agent to induce the student athlete to enter into
3 the contract.

4 Section 13. REQUIRED RECORDS.--

5 A. An athlete agent shall retain the following
6 records for a period of five years:

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

9 (2) any agency contract entered into by the
10 athlete agent; and

11 (3) any direct costs incurred by the athlete
12 agent in the recruitment or solicitation of a student athlete
13 to enter into an agency contract.

14 B. Records required pursuant to Subsection A of
15 this section to be retained are open to inspection by the
16 commission during normal business hours.

17 Section 14. PROHIBITED CONDUCT.--

18 A. An athlete agent, with the intent to induce a
19 student athlete to enter into an agency contract, shall not:

20 (1) give any materially false or misleading
21 information or make a materially false promise or
22 representation;

23 (2) furnish anything of value to a student
24 athlete before the student athlete enters into the agency
25 contract; or

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1 (3) furnish anything of value to any
2 individual other than the student athlete or another registered
3 athlete agent.

4 B. An athlete agent shall not intentionally:

5 (1) initiate contact with a student athlete
6 unless registered pursuant to the Uniform Athlete Agents Act;

7 (2) refuse or fail to retain or permit
8 inspection of the records required to be retained pursuant to
9 Section 13 of the Uniform Athlete Agents Act;

10 (3) fail to register when required pursuant to
11 Section 4 of the Uniform Athlete Agents Act;

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

15 (5) predate or postdate an agency contract; or

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

21 Section 15. CRIMINAL PENALTIES.--An athlete agent who
22 violates the provisions of Section 14 of the Uniform Athlete
23 Agents Act is guilty of a misdemeanor and upon conviction shall
24 be sentenced pursuant to the provisions of Section 31-19-1 NMSA
25 1978.

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1 Section 16. CIVIL REMEDIES.--

2 A. An educational institution has a right of action
3 against an athlete agent for damages caused by a violation of
4 the provisions of the Uniform Athlete Agents Act. In an action
5 pursuant to this section, the court may award to the prevailing
6 party costs and reasonable attorney fees.

7 B. Damages of an educational institution pursuant
8 to Subsection A of this section include losses and expenses
9 incurred because, as a result of the conduct of an athlete
10 agent, the educational institution was injured by a violation
11 of the Uniform Athlete Agents Act or was penalized,
12 disqualified or suspended from participation in athletics by a
13 national association for the promotion and regulation of
14 athletics, by an athletic conference or by reasonable self-
15 imposed disciplinary action taken to mitigate sanctions likely
16 to be imposed by such an organization.

17 C. A right of action pursuant to this section does
18 not accrue until the educational institution discovers or by
19 the exercise of reasonable diligence would have discovered the
20 violation by the athlete agent.

21 D. The Uniform Athlete Agents Act does not restrict
22 rights, remedies or defenses of any person under law or equity.

23 Section 17. ADMINISTRATIVE PENALTY.--The commission may
24 assess a civil penalty against an athlete agent not to exceed
25 twenty-five thousand dollars (\$25,000) for a violation of the

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1 Uniform Athlete Agents Act.

2 Section 18. UNIFORMITY OF APPLICATION AND CONSTRUCTION.--

3 In applying and construing the Uniform Athlete Agents Act,
4 consideration shall be given to the need to promote uniformity
5 of the law with respect to its subject matter among states that
6 enact it.

7 Section 19. FEDERAL ELECTRONIC SIGNATURES IN GLOBAL AND
8 NATIONAL COMMERCE ACT.--The provisions of the Uniform Athlete
9 Agents Act governing the legal effect, validity or
10 enforceability of electronic records or signatures, and of
11 contracts formed or performed with the use of such records or
12 signatures, conform to the requirements of Section 102 of the
13 federal Electronic Signatures in Global and National Commerce
14 Act and supersede, modify and limit the federal Electronic
15 Signatures in Global and National Commerce Act.

16 Section 20. SEVERABILITY.--If any provision of the
17 Uniform Athlete Agents Act or its application to any person or
18 circumstance is held invalid, the invalidity does not affect
19 other provisions or applications of that act that can be given
20 effect without the invalid provision or application, and to
21 this end the provisions of that act are severable.

22 Section 21. EFFECTIVE DATE.--The effective date of the
23 provisions of this act is July 1, 2009.

24 - 18 -

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