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HOUSE BILL 401

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

W. Ken Martinez

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

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

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

23 F. "intercollegiate sport" means a sport played at
24 the collegiate level for which eligibility requirements for
25 participation by a student athlete are established by a

1 national association for the promotion or regulation of
2 collegiate athletics;

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

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

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

16 J. "registration" means registration as an athlete
17 agent pursuant to the Uniform Athlete Agents Act;

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

22 L. "student athlete" means an individual who
23 engages in, is eligible to engage in, or may be eligible in the
24 future to engage in, any intercollegiate sport. If an
25 individual is permanently ineligible to participate in a

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1 particular intercollegiate sport, the individual is not a
2 student athlete for purposes of that sport.

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

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

9 B. The secretary of state may issue subpoenas for
10 any material that is relevant to the administration of the
11 Uniform Athlete Agents Act.

12 Section 4. ATHLETE AGENTS--REGISTRATION REQUIRED--VOID
13 CONTRACTS. --

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

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

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

24 (2) within seven days after an initial act as
25 an athlete agent, the individual submits an application for

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1 registration as an athlete agent in this state.

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

5 Section 5. REGISTRATION AS ATHLETE AGENT--FORM--
6 REQUIREMENTS.--

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

15 (1) the name of the applicant and the address
16 of the applicant's principal place of business;

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

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

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

23 (a) formal training as an athlete agent;

24 (b) practical experience as an athlete
25 agent; and

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

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

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

10 (7) the names and addresses of all persons who
11 are:

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

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

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

24 (9) whether there has been an administrative
25 or judicial determination that the applicant or any person

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1 named pursuant to Paragraph (7) of this subsection has made a
2 false, misleading, deceptive or fraudulent representation;

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

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

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

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

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1 to the other state:

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

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

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

11 Section 6. CERTIFICATE OF REGISTRATION--ISSUANCE OR
12 DENIAL--RENEWAL. --

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

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

25 (1) been convicted of a crime that, if

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1 committed in this state, would be a crime involving moral
2 turpitude or a felony;

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

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

8 (4) engaged in conduct prohibited by Section
9 14 of the Uniform Athlete Agents Act;

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

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

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

22 C. In making a determination under Subsection B of
23 this section, the secretary of state shall consider:

24 (1) how recently the conduct occurred;

25 (2) the nature of the conduct and the context

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1 in which it occurred; and

2 (3) any other relevant conduct of the
3 applicant.

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

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

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

24 (2) contains information substantially similar
25 to or more comprehensive than that required in an application

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1 for renewal submitted in this state; and

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

4 F. A certificate of registration or a renewal of a
5 registration is valid for two years.

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

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

12 B. The secretary of state may deny, suspend, revoke
13 or refuse to renew a certificate of registration or licensure
14 only after proper notice and an opportunity for a hearing.

15 Section 8. TEMPORARY REGISTRATION. --The secretary of
16 state may issue a temporary certificate of registration while
17 an application for registration or renewal of registration is
18 pending.

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

22 A. twenty dollars (\$20.00) for an initial
23 application for registration;

24 B. ten dollars (\$10.00) for an application for
25 registration based upon a certificate of registration or

1 licensure issued by another state;

2 C. twenty dollars (\$20.00) for an application for
3 renewal of registration; or

4 D. ten dollars (\$10.00) for an application for
5 renewal of registration based upon an application for renewal
6 of registration or licensure submitted in another state.

7 Section 10. REQUIRED FORM OF CONTRACT. --

8 A. An agency contract must be in a record, signed
9 or otherwise authenticated by the parties.

10 B. An agency contract must state or contain:

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

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

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

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

25 (5) the duration of the contract; and

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1 (6) the date of execution.

2 C. An agency contract must contain, in close
3 proximity to the signature of the student athlete, a
4 conspicuous notice in boldface type in capital letters stating:

5 "WARNING TO STUDENT ATHLETE

6 IF YOU SIGN THIS CONTRACT:

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

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

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

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

21 E. The athlete agent shall give a record of the
22 signed or otherwise authenticated agency contract to the
23 student athlete at the time of execution.

24 Section 11. NOTICE TO EDUCATIONAL INSTITUTION. --

25 A. Within seventy-two hours after entering into an

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1 agency contract or before the next scheduled athletic event in
2 which the student athlete may participate, whichever occurs
3 first, the athlete agent shall give notice in a record of the
4 existence of the contract to the athletic director of the
5 educational institution at which the student athlete is
6 enrolled or the athlete agent has reasonable grounds to believe
7 the student athlete intends to enroll.

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

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

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

19 B. A student athlete may not waive the right to
20 cancel an agency contract.

21 C. If a student athlete cancels an agency contract,
22 the student athlete is not required to pay any consideration
23 under the contract or to return any consideration received from
24 the athlete agent to induce the student athlete to enter into
25 the contract.

1 Section 13. **REQUIRED RECORDS.** --

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

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

6 (2) any agency contract entered into by the
7 athlete agent; and

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

11 B. Records required pursuant to Subsection A of
12 this section to be retained are open to inspection by the
13 secretary of state during normal business hours.

14 Section 14. **PROHIBITED CONDUCT.** --

15 A. An athlete agent, with the intent to induce a
16 student athlete to enter into an agency contract, may not:

17 (1) give any materially false or misleading
18 information or make a materially false promise or
19 representation;

20 (2) furnish anything of value to a student
21 athlete before the student athlete enters into the agency
22 contract; or

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

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B. An athlete agent shall not intentionally:

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

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

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

(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.

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

Section 16. CIVIL REMEDIES. --

A. An educational institution has a right of action against an athlete agent or a former student athlete for

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1 damages caused by a violation of the provisions of the Uniform
2 Athlete Agents Act. In an action pursuant to this section, the
3 court may award to the prevailing party costs and reasonable
4 attorney fees.

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

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

19 D. Any liability of the athlete agent or the former
20 student athlete pursuant to this section is several and not
21 joint.

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

24 Section 17. ADMINISTRATIVE PENALTY.--The secretary of
25 state may assess a civil penalty against an athlete agent not

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1 to exceed twenty-five thousand dollars (\$25,000) for a
2 violation of the Uniform Athlete Agents Act.

3 Section 18. UNIFORMITY OF APPLICATION AND CONSTRUCTION. --
4 In applying and construing the Uniform Athlete Agents Act,
5 consideration must be given to the need to promote uniformity
6 of the law with respect to its subject matter among states that
7 enact it.

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

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

23 Section 21. EFFECTIVE DATE. --The effective date of the
24 provisions of this act is July 1, 2003.