

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2411 Session of  
2002

INTRODUCED BY HERMAN, BENNINGHOFF, ADOLPH, ALLEN, M. BAKER,  
CAPPELLI, CLYMER, COLAFELLA, CORRIGAN, COSTA, COY, CREIGHTON,  
CURRY, DALLY, J. EVANS, FAIRCHILD, FICHTER, FLICK, GEORGE,  
GODSHALL, GRUCELA, HARHAI, HENNESSEY, HERSHEY, MANN,  
MICHLOVIC, R. MILLER, NAILOR, SAINATO, SATHER, SAYLOR,  
SCHULER, SHANER, B. SMITH, STABACK, TANGRETTI, TRELLO, TRICH,  
WILT, G. WRIGHT, YUDICHAK AND TURZAI, MARCH 13, 2002

REFERRED TO COMMITTEE ON PROFESSIONAL LICENSURE, MARCH 13, 2002

AN ACT

1 Establishing requirements for persons acting as agents for  
2 athletes; and providing for licensure requirements, for power  
3 and duty of the Secretary of the Commonwealth and for civil  
4 and criminal penalties.

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15 The General Assembly of the Commonwealth of Pennsylvania  
16 hereby enacts as follows:  
17 Section 1. Short title.  
18 This act shall be known and may be cited as the Uniform  
19 Athlete Agents Act.  
20 Section 2. Definitions.  
21 The following words and phrases when used in this act shall  
22 have the meanings given to them in this section unless the  
23 context clearly indicates otherwise:  
24 "Agency contract." An agreement in which a student athlete  
25 authorizes a person to negotiate or solicit on behalf of the  
26 student athlete a professional sports-services contract or an  
27 endorsement contract.  
28 "Athlete agent." An individual who enters into an agency  
29 contract with a student athlete or, directly or indirectly,  
30 recruits or solicits a student athlete to enter into an agency

1 contract. The term includes an individual who represents to the  
2 public that the individual is an athlete agent. The term does  
3 not include a spouse, parent, sibling, grandparent or guardian  
4 of the student athlete or an individual acting solely on behalf  
5 of a professional sports team or professional sports  
6 organization.

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

13 "Contact." A communication, direct or indirect, between an  
14 athlete agent and a student athlete to recruit or solicit the  
15 student athlete to enter into an agency contract.

16 "Endorsement contract." An agreement under which a student  
17 athlete is employed or receives consideration to use on behalf  
18 of the other party any value that the student athlete may have  
19 because of publicity, reputation, following or fame obtained  
20 because of athletic ability or performance.

21 "Intercollegiate sport." A sport played at the collegiate  
22 level for which eligibility requirements for participation by a  
23 student athlete are established by a national association for  
24 the promotion or regulation of collegiate athletics.

25 "Person." An individual, corporation, business trust,  
26 estate, trust, partnership, limited liability company,  
27 association, joint venture, government, governmental  
28 subdivision, agency or instrumentality, public corporation or  
29 any other legal or commercial entity.

30 "Professional sports-services contract." An agreement under

1 which an individual is employed or agrees to render services as  
2 a player on a professional sports team, with a professional  
3 sports organization or as a professional athlete.

4 "Record." Information that is inscribed on a tangible medium  
5 or that is stored in an electronic or other medium and is  
6 retrievable in perceivable form.

7 "Registration." Registration as an athlete agent pursuant to  
8 this act.

9 "Secretary." The Secretary of the Commonwealth.

10 "State." A state of the United States, the District of  
11 Columbia, Puerto Rico, the United States Virgin Islands or any  
12 territory or insular possession subject to the jurisdiction of  
13 the United States.

14 "Student athlete." An individual who engages in, is eligible  
15 to engage in or may be eligible in the future to engage in any  
16 intercollegiate sport. If an individual is permanently  
17 ineligible to participate in a particular intercollegiate sport,  
18 the individual is not a student athlete for purposes of that  
19 sport.

20 Section 3. Service of process and subpoenas.

21 (a) Service of process.--By acting as an athlete agent in  
22 this Commonwealth, a nonresident individual appoints the  
23 secretary as the individual's agent for service of process in  
24 any civil action in this Commonwealth related to the  
25 individual's acting as an athlete agent in this Commonwealth.

26 (b) Subpoenas.--The secretary may issue subpoenas for any  
27 material that is relevant to the administration of this act.

28 Section 4. Registration required and void contracts.

29 (a) Certificate of registration required.--Except as  
30 otherwise provided in subsection (b), an individual may not act

1 as an athlete agent in this Commonwealth without holding a  
2 certificate of registration under section 6 or 8.

3 (b) Exceptions.--Before being issued a certificate of  
4 registration, an individual may act as an athlete agent in this  
5 Commonwealth for all purposes except signing an agency contract,  
6 if:

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

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

13 (c) Contracts void.--An agency contract resulting from  
14 conduct in violation of this section is void, and the athlete  
15 agent shall return any consideration received under the  
16 contract.

17 Section 5. Registration as athlete agent, form and  
18 requirements.

19 (a) Applications.--An applicant for registration shall  
20 submit an application for registration to the secretary in a  
21 form prescribed by the secretary. An application filed under  
22 this section is a public record. The application must be in the  
23 name of an individual and, except as otherwise provided in  
24 subsection (b), signed or otherwise authenticated by the  
25 applicant under penalty of perjury and state or contain:

26 (1) The name of the applicant and the address of the  
27 applicant's principal place of business.

28 (2) The name of the applicant's business or employer, if  
29 applicable.

30 (3) Any business or occupation engaged in by the

1 applicant for the five years next preceding the date of  
2 submission of the application.

3 (4) A description of the applicant's formal training as  
4 an athlete agent, practical experience as an athlete agent  
5 and educational background relating to the applicant's  
6 activities as an athlete agent.

7 (5) The names and addresses of three individuals not  
8 related to the applicant who are willing to serve as  
9 references.

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

14 (7) The names and addresses of all persons who are:

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

19 (ii) with respect to a corporation employing the  
20 athlete agent, the officers, directors and any  
21 shareholder of the corporation having an interest of 5%  
22 or greater.

23 (8) Whether the applicant or any person named pursuant  
24 to paragraph (7) has been convicted of a crime that, if  
25 committed in this Commonwealth, would be a crime involving  
26 moral turpitude or a felony, and identify the crime.

27 (9) Whether there has been any administrative or  
28 judicial determination that the applicant or any person named  
29 pursuant to paragraph (7) has made a false, misleading,  
30 deceptive or fraudulent representation.

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

7           (11) Any sanction, suspension or disciplinary action  
8 taken against the applicant or any person named pursuant to  
9 paragraph (7) arising out of occupational or professional  
10 conduct.

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

16       (b) Applications and certificates from other states.--An  
17 individual who has submitted an application for and holds a  
18 certificate of registration or licensure as an athlete agent in  
19 another state may submit a copy of the application and  
20 certificate in lieu of submitting an application in the form  
21 prescribed pursuant to subsection (a). The secretary shall  
22 accept the application and the certificate from the other state  
23 as an application for registration in this Commonwealth if the  
24 application to the other state:

25           (1) Was submitted in the other state within six months  
26 next preceding the submission of the application in this  
27 Commonwealth and the applicant certifies that the information  
28 contained in the application is current.

29           (2) Contains information substantially similar to or  
30 more comprehensive than that required in an application

1 submitted this Commonwealth.

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

4 Section 6. Certificate of registration, issuance or denial and  
5 renewal.

6 (a) Issuance of certificate.--Except as otherwise provided  
7 in subsection (b), the secretary shall issue a certificate of  
8 registration to an individual who complies with section 5(a) or  
9 whose application has been accepted under section 5(b).

10 (b) Denial of registration.--The secretary may refuse to  
11 issue a certificate of registration if the secretary determines  
12 that the applicant has engaged in conduct that has a significant  
13 adverse effect on the applicant's fitness to act as an athlete  
14 agent. In making the determination, the secretary may consider  
15 whether the applicant has:

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

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

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

24 (4) engaged in conduct prohibited by section 14;

25 (5) had a registration or licensure as an athlete agent  
26 suspended, revoked or denied or been refused renewal of  
27 registration or licensure as an athlete agent in any state;

28 (6) engaged in conduct the consequence of which was that  
29 a sanction, suspension or declaration of ineligibility to  
30 participate in an interscholastic or intercollegiate athletic



1 event was imposed on a student athlete or educational  
2 institution; or

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

6 (c) Standards.--In making a determination under subsection  
7 (b), the secretary shall consider:

8 (1) How recently the conduct occurred.

9 (2) The nature of the conduct and the context in which  
10 it occurred.

11 (3) Any other relevant conduct of the applicant.

12 (d) Renewal of registration.--An athlete agent may apply to  
13 renew a registration by submitting an application for renewal in  
14 a form prescribed by the secretary. An application filed under  
15 this section is a public record. The application for renewal  
16 must be signed by the applicant under penalty of perjury and  
17 must contain current information on all matters required in an  
18 original registration.

19 (e) Application and registration from other states.--An  
20 individual who has submitted an application for renewal of  
21 registration or licensure in another state, in lieu of  
22 submitting an application for renewal in the form prescribed  
23 pursuant to subsection (d), may file a copy of the application  
24 for renewal and a valid certificate of registration or licensure  
25 from the other state. The secretary shall accept the application  
26 for renewal from the other state as an application for renewal  
27 in this Commonwealth if the application to the other state:

28 (1) Was submitted in the other state within six months  
29 next preceding the filing in this state and the applicant  
30 certifies the information contained in the application for

1 renewal is current.

2 (2) Contains information substantially similar to or  
3 more comprehensive than that required in an application for  
4 renewal submitted in this Commonwealth.

5 (3) Was signed by the applicant under penalty of  
6 perjury.

7 (f) Terms of registration.--A certificate of registration or  
8 a renewal of a registration is valid for two years.

9 Section 7. Suspension, revocation or refusal to renew  
10 registration.

11 (a) Suspension, revocation or refusal to renew.--The  
12 secretary may suspend, revoke or refuse to renew a registration  
13 for conduct that would have justified denial of registration  
14 under section 6(b).

15 (b) Notice and hearing.--The secretary may deny, suspend,  
16 revoke or refuse to renew a certificate of registration or  
17 licensure only after proper notice and an opportunity for a  
18 hearing.

19 Section 8. Temporary registration.

20 The secretary may issue a temporary certificate of  
21 registration while an application for registration or renewal of  
22 registration is pending.

23 Section 9. Registration and renewal fees.

24 An application for registration or renewal of registration  
25 must be accompanied by a fee in the amount of \$100.

26 Section 10. Required form of contract.

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

29 (b) Contents of contract.--An agency contract must state or  
30 contain:

1           (1) The amount and method of calculating the  
2           consideration to be paid by the student athlete for services  
3           to be provided by the athlete agent under the contract and  
4           any other consideration the athlete agent has received or  
5           will receive from any other source for entering into the  
6           contract or for providing the services.

7           (2) The name of any person not listed in the application  
8           for registration or renewal of registration who will be  
9           compensated because the student athlete signed the agency  
10          contract.

11          (3) A description of any expenses that the student  
12          athlete agrees to reimburse.

13          (4) A description of the services to be provided to the  
14          student athlete.

15          (5) The duration of the contract.

16          (6) The date of execution.

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

20                               WARNING TO STUDENT ATHLETE

21          IF YOU SIGN THIS CONTRACT:

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

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

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

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

#### Section 11. Notice to educational institution.

(a) Notice of existence of contract.--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) Other notification.--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.

#### Section 12. Student athlete's right to cancel.

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. A student athlete may not waive the right to cancel an agency contract. If a student athlete cancels an agency contract, the student athlete is not required to pay any consideration under the contract or

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

3 Section 13. Required records.

4 (a) Retention of records.--An athlete agent shall retain the  
5 following records for a period of five years.

6 (1) The name and address of each individual represented  
7 by the athlete agent.

8 (2) Any agency contract entered into by the athlete  
9 agent.

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

13 (b) Inspection of records.--Records required by subsection  
14 (a) to be retained are open to inspection by the secretary  
15 during normal business hours.

16 Section 14. Prohibited conduct.

17 (a) Conduct by agent.--An athlete agent, with the intent to  
18 induce a student athlete to enter into an agency contract, may  
19 not:

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

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

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

27 (b) Conduct by athlete.--An athlete agent may not  
28 intentionally:

29 (1) initiate contact with a student athlete unless  
30 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.

#### Section 15. Criminal penalties.

An athlete agent who violates section 14 commits a second degree misdemeanor.

#### Section 16. Civil remedies.

(a) Education institutions.--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 fees.

(b) Damages.--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.

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

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

8 (e) Applicability.--This act does not restrict rights,  
9 remedies or defenses of any person under law or equity.

10 Section 17. Administrative penalty.

11 The secretary may assess a civil penalty against an athlete  
12 agent not to exceed \$2,500 for a violation of this act.

13 Section 18. Uniformity of application and construction.

14 In applying and construing this act, consideration must be  
15 given to the need to promote uniformity of the law with respect  
16 to its subject matter among states that enact it.

17 Section 19. Electronic Signatures in Global and National  
18 Commerce Act.

19 The provisions of this act governing the legal effect,  
20 validity or enforceability of electronic records or signatures  
21 and of contracts formed or performed with the use of such  
22 records or signatures must conform to the requirements of  
23 section 102 of the Electronic Signatures in Global and National  
24 Commerce Act (Public Law 106-229, 15 U.S.C. § 7002 et seq.) and  
25 supersede, modify and limit the Electronic Signatures in Global  
26 and National Commerce Act.

27 Section 20. Severability.

28 If any provision of this act or its application to any person  
29 or circumstance is held invalid, the invalidity shall not affect  
30 other provisions or applications of this act which can be given

1 effect without the invalid provision or application, and to this  
2 end the provisions of this act are severable.  
3 Section 21. Effective date.  
4 This act shall take effect in 60 days.