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HOUSE BILL 770

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

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:**

**(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**

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

8 (3) "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
12 students and female students, the athletic program for males
13 or the athletic program for females, as appropriate;

14 (4) "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 (5) "endorsement contract" means an agreement
19 under which a student-athlete is employed or receives
20 consideration to use on behalf of the other party any value
21 that the student-athlete may have because of publicity,
22 reputation, following or fame obtained because of athletic
23 ability or performance;

24 (6) "intercollegiate sport" means a sport played
25 at the collegiate level for which eligibility requirements for

1 participation by a student-athlete are established by a
2 national association for the promotion or regulation of
3 collegiate athletics;

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

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

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

18 (10) "registration" means registration as an
19 athlete agent pursuant to the Uniform Athlete Agents Act;

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

24 (12) "student-athlete" means an individual who
25 engages in, is eligible to engage in, or may be eligible in

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1 the 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 secretary of state 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 secretary of state may issue subpoenas for
12 any material that is relevant to the administration of the
13 Uniform Athlete Agents Act.

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

16 (a) Except as otherwise provided in Subsection
17 (b), an individual may not act as an athlete agent in this
18 state without holding a certificate of registration under
19 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
22 this state for all purposes except signing an agency contract,
23 if:

24 (1) a student-athlete or another person
25 acting on behalf of the student-athlete initiates

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1 communication with the individual; and

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

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

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

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

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

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

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

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

- 1 (A) formal training as an athlete
2 agent;
- 3 (B) practical experience as an athlete
4 agent; and
- 5 (C) educational background relating to
6 the applicant's activities as an athlete agent;
- 7 (5) the names and addresses of three
8 individuals not related to the applicant who are willing to
9 serve as references;
- 10 (6) the name, sport and last known team for
11 each individual for whom the applicant acted as an athlete
12 agent during the five years next preceding the date of
13 submission of the application;
- 14 (7) the names and addresses of all persons
15 who are:
- 16 (A) with respect to the athlete agent's
17 business if it is not a corporation, the partners, members,
18 officers, managers, associates or profit-sharers of the
19 business; and
- 20 (B) with respect to a corporation
21 employing the athlete agent, the officers, directors and any
22 shareholder of the corporation having an interest of five
23 percent or greater;
- 24 (8) whether the applicant or any person named
25 pursuant to Paragraph (7) has been convicted of a crime that,

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

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

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

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

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

22 (b) An individual who has submitted an application
23 for, and holds a certificate of, registration or licensure as
24 an athlete agent in another state, may submit a copy of the
25 application and certificate in lieu of submitting an

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1 application in the form prescribed pursuant to Subsection (a).
2 The secretary of state shall accept the application and the
3 certificate from the other state as an application for
4 registration in this state if the application to the other
5 state:

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

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

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

15 Section 6. CERTIFICATE OF REGISTRATION--ISSUANCE OR
16 DENIAL--RENEWAL. --

17 (a) Except as otherwise provided in Subsection
18 (b), the secretary of state shall issue a certificate of
19 registration to an individual who complies with Section 5(a)
20 or whose application has been accepted under Section 5(b).

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

1 secretary of state may consider whether the 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
7 as 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;

12 (5) had a registration or licensure as an
13 athlete agent suspended, revoked or denied or been refused
14 renewal of registration or licensure as an athlete agent in
15 any 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
25 (b), the secretary of state shall consider:

- 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 registration by submitting an application for renewal in a
8 form prescribed by the secretary of state. An application
9 filed under this section is a public record. The application
10 for renewal must be signed by the applicant under penalty of
11 perjury and must 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), may file a copy of the
17 application for renewal and a valid certificate of
18 registration or licensure from the other state. The secretary
19 of state shall accept the application for renewal from the
20 other state as an application for renewal in this state if the
21 application 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
2 similar to or more comprehensive than that required in an
3 application 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
7 a registration is valid for two years.

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

10 (a) The secretary of state may suspend, revoke or
11 refuse to renew a registration for conduct that would have
12 justified denial of registration under Section 6(b).

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

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

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

24 (1) twenty dollars (\$20.00) for an initial
25 application for registration;

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1 (2) ten dollars (\$10.00) for an application
2 for registration based upon a certificate of registration or
3 licensure issued by another state;

4 (3) twenty dollars (\$20.00) for an
5 application for renewal of registration; or

6 (4) ten dollars (\$10.00) 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 must be in a record, signed
12 or otherwise authenticated by the parties.

13 (b) An agency contract must state or contain:

14 (1) the amount and method of calculating the
15 consideration to be paid by the student-athlete for services
16 to 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
19 or 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;

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 must contain, in close
6 proximity to the signature of the student-athlete, a
7 conspicuous notice in boldface type in capital letters
8 stating:

9 **WARNING TO STUDENT-ATHLETE**

10 **IF YOU SIGN THIS CONTRACT:**

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

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

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

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

25 (e) The athlete agent shall give a record of the

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1 signed or otherwise authenticated agency contract to the
2 student-athlete at the time of execution.

3 Section 11. NOTICE TO EDUCATIONAL INSTITUTION. --

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

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

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

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

23 (b) A student-athlete may not waive the right to
24 cancel an agency contract.

25 (c) If a student-athlete cancels an agency

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1 contract, the student-athlete is not required to pay any
2 consideration under the contract or to return any
3 consideration received from the athlete agent to induce the
4 student-athlete to enter into the contract.

5 Section 13. REQUIRED RECORDS. --

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

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

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

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

15 (b) Records required by Subsection (a) to be
16 retained are open to inspection by the secretary of state
17 during normal business hours.

18 Section 14. PROHIBITED CONDUCT. --

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

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

24 (2) furnish anything of value to a student-
25 athlete before the student-athlete enters into the agency

1 contract; or

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

5 (b) An athlete agent may not intentionally:

6 (1) initiate contact with a student-athlete
7 unless registered under the Uniform Athlete Agents Act;

8 (2) refuse or fail to retain or permit
9 inspection of the records required to be retained by Section
10 13;

11 (3) fail to register when required by Section
12 4;

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

16 (5) predate or postdate an agency contract;
17 or

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

23 Section 15. CRIMINAL PENALTIES. --An athlete agent who
24 violates Section 14 is guilty of a misdemeanor and upon
25 conviction shall be sentenced pursuant to the provisions of

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1 Section 31-19-1 NMSA 1978.

2 Section 16. CIVIL REMEDIES. --

3 (a) An educational institution has a right of
4 action against an athlete agent or a former student-athlete
5 for damages caused by a violation of the Uniform Athlete
6 Agents Act. In an action under this section, the court may
7 award to the prevailing party costs and reasonable attorney
8 fees.

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

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

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

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1 (e) The Uniform Athlete Agents Act does not
2 restrict rights, remedies or defenses of any person under law
3 or equity.

4 Section 17. ADMINISTRATIVE PENALTY. --The secretary of
5 state may assess a civil penalty against an athlete agent not
6 to exceed twenty-five thousand dollars (\$25,000) for a
7 violation of the Uniform Athlete Agents Act.

8 Section 18. UNIFORMITY OF APPLICATION AND
9 CONSTRUCTION. --In applying and construing the Uniform Athlete
10 Agents Act, consideration must be given to the need to promote
11 uniformity of the law with respect to its subject matter among
12 states that enact it.

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

22 Section 20. SEVERABILITY. --If any provision of the
23 Uniform Athlete Agents Act or its application to any person or
24 circumstance is held invalid, the invalidity does not affect
25 other provisions or applications of that act which can be

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1 given effect without the invalid provision or application, and
2 to this end the provisions of that act are severable.

3 Section 21. EFFECTIVE DATE. --The effective date of the
4 provisions of this act is July 1, 2001.

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