

No. 2002-180

AN ACT

HB 2411

Amending Title 5 (Athletics and Sports) of the Pennsylvania Consolidated Statutes, revising provisions relating to athlete agents.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Part II of Title 5 of the Pennsylvania Consolidated Statutes is repealed.

Section 2. Title 5 is amended by adding a part to read:

PART II
ATHLETE AGENTS

Subpart

- A. General Provisions
- B. Registration of Athlete Agents

SUBPART A
GENERAL PROVISIONS

Chapter

- 31. Preliminary Provisions

CHAPTER 31
PRELIMINARY PROVISIONS

Sec.

- 3101. Short title of part.
- 3102. Definitions.
- 3103. Administration.
- 3104. Service of process.
- 3105. Subpoenas.
- 3106. Rules and regulations.

§ 3101. Short title of part.

This part shall be known and may be cited as the Uniform Athlete Agents Act.

§ 3102. Definitions.

The following words and phrases when used in this part shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Agency contract.” Any contract or agreement in which an individual or a student athlete authorizes or empowers a person to negotiate or solicit on

behalf of the individual or the student athlete one or more professional sports services contracts.

"Athlete agent." A person who enters into an agency contract with an individual or a student athlete or directly or indirectly recruits or solicits an individual or a student athlete to enter into an agency contract. The term does not include a spouse, parent, sibling, son, daughter or grandparent of the individual or student athlete, an individual acting solely on behalf of a professional sports team or a coach, trainer or other employee of a secondary or postsecondary school who is acting on behalf of a student athlete of the same secondary or postsecondary school, provided that such activities are within the scope of employment of the coach, trainer or other employee. The term includes a person who represents to the public that the person is an athlete agent.

"Athletic director." An individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or the athletic program for females.

"Commission." The State Athletic Commission.

"Contact." A communication, direct or indirect, between an athlete agent and an individual or a student athlete to recruit or solicit the individual or student athlete to enter into an agency contract, including by telephonic, facsimile or other electronic method, mail, electronic mail or personal means.

"Conviction." A finding of guilt by a judge, jury, a plea of guilty or a plea of nolo contendere.

"Department." The Department of State of the Commonwealth.

"Institution of higher education." A public or private college or university, including a community college.

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

"Person." An individual, corporation, partnership, limited liability company, association, joint venture, public corporation or any other legal or commercial entity.

"Professional sports services contract." A contract or agreement under which an individual is employed or agrees to render services as a player on a professional sports team, with a professional sports organization or as a professional athlete.

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

"Registration." Registration as an athlete agent pursuant to Chapter 33 (relating to registration).

“State.” A state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

“Student athlete.” An individual who engages in, is eligible to engage in or may be eligible in the future to engage in any intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student athlete for purposes of that sport.

§ 3103. Administration.

The commission shall administer this part.

§ 3104. Service of process.

By engaging in the business of an athlete agent in this Commonwealth, a nonresident individual appoints the Secretary of the Commonwealth as the individual’s agent to accept service of process in any civil action related to the individual’s business as an athlete agent in this Commonwealth.

§ 3105. Subpoenas.

The commission may issue subpoenas for any relevant material under this part.

§ 3106. Rules and regulations.

The commission shall have the power and duty to adopt and revise regulations in accordance with the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act, as are reasonably necessary to administer and effectuate the purposes of this part.

SUBPART B REGISTRATION OF ATHLETE AGENTS

CHAPTER 33 REGISTRATION

Sec.

3301. Athlete agent registration.

3302. Application for registration.

3303. Issuance of registration.

3304. Denial of registration.

3305. Renewal of registration.

3306. Period of registration.

3307. Suspension, revocation, restriction or refusal to renew registration.

3308. Fees.

3309. Form of contract for student athletes.

3310. Notice to educational institution.

3311. Student athlete’s right to cancel.

3312. Required records.

3313. Prohibited acts.

3314. Civil remedies.

3315. Administrative penalty.

3316. Bonding requirements.

3317. Exemption from registration and bonding requirement.

3318. Disposition of commission receipts.

3319. Records.

3320. Transferability of registration.

§ 3301. Athlete agent registration.

(a) Certificate of registration required.—Except as otherwise provided in subsection (b), a person shall not directly or indirectly serve or offer to serve as an athlete agent in this Commonwealth before being issued a certificate of registration under section 3303 (relating to issuance of registration). An out-of-State agent must register if the agent through direct or indirect contact recruits or solicits an individual or student athlete to enter into an agency contract or procures,¹ offers, promises or attempts to obtain employment for an individual or student athlete with a Pennsylvania professional sports team as a professional athlete in this Commonwealth where any one or more of the following conditions apply:

(1) The athlete agent is a resident of this Commonwealth.

(2) The athlete is a resident of this Commonwealth or is attending an institution of higher education in this Commonwealth.

(3) The professional sports team has its home field or its corporate headquarters in this Commonwealth.

(b) Exception.—An unregistered out-of-State agent or person may act as an athlete agent in this Commonwealth before being issued a certificate of registration for all purposes except signing an agency contract if the following conditions are met:

(1) A student athlete or another acting on behalf of the student athlete initiates contact with the person.

(2) Within seven days after an initial act as an athlete agent, the person submits an application to register as an athlete agent in this Commonwealth.

(3) The unregistered out-of-State agent or person has never had registration issued under this chapter or a predecessor statute revoked by the commission.

(c) Certain contracts void.—An agency contract resulting from conduct in violation of this section is void. The athlete agent shall return any consideration received under the contract.

§ 3302. Application for registration.

(a) Procedure.—An applicant for registration shall submit an application for registration to the commission in writing on a form supplied by the commission and approved by the department. Except as otherwise provided in subsection (b), the application must be in the name of an individual and be verified by the applicant and must state, contain or be accompanied by:

¹“or who procures,” in enrolled bill.

- (1) The information required by this chapter and such other information as the commission may reasonably require.
- (2) A processing fee of \$100.
- (3) The name of the applicant and the address of the applicant's principal place of business.
- (4) The name of the applicant's business or employer, if applicable.
- (5) Any business or occupation engaged in by the applicant for the five years next preceding the date of submission of the application.
- (6) A description of the applicant's:
 - (i) Formal training as an athlete agent.
 - (ii) Practical experience as an athlete agent.
 - (iii) Educational background relating to the applicant's activities as an athlete agent.
- (7) The names and addresses of three individuals not related to the applicant who are willing to serve as references.
- (8) The name, sport and last known team for each individual for whom the applicant provided services as an athlete agent during the five years next preceding the date of submission of the application.
- (9) The names and addresses of all persons who are:
 - (i) With respect to the athlete agent's business if it is not a corporation, the partners, officers, associates or profit-sharers.
 - (ii) With respect to a corporation employing the athlete agent, the officers, directors and any shareholder of the corporation with a 5% or greater interest.
- (10) Whether the applicant or any other person named pursuant to paragraph (9) has been convicted of a crime that, if committed in this Commonwealth, would be a felony or other crime involving moral turpitude, and identify the crime.
- (11) Whether there has been any administrative or judicial determination that the applicant or any other person named pursuant to paragraph (9) has made a false, misleading, deceptive or fraudulent representation.
- (12) Any instance in which the conduct of the applicant or any other person named pursuant to paragraph (9) resulted in the imposition of a sanction, suspension or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student athlete or educational institution.
- (13) Any sanction, suspension or disciplinary action taken against the applicant or any other person named pursuant to paragraph (9) arising out of occupational or professional conduct.
- (14) Whether there has been any denial of an application for, suspension or revocation of or refusal to renew the registration or licensure of the applicant or any other person named pursuant to paragraph (9) as an athlete agent in any state.

(b) **Out-of-State agents.**—A person who has submitted an application for and received a certificate of registration or licensure as an athlete agent in another state may submit a copy of the application and a valid certificate of registration or licensure from the other state in lieu of submitting an application in the form prescribed pursuant to subsection (a). The commission shall accept the application and the certificate from the other state as an application for registration in this Commonwealth if the application to the other state:

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

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

(3) Was signed by the applicant.

(4) The unregistered out-of-State agent has never had registration issued under this chapter or a predecessor statute revoked by the commission.

(c) **Criminal background check.**—Every applicant shall complete an application or process as may be necessary to request the Pennsylvania State Police to provide a copy of the applicant's criminal history record to the commission.

§ 3303. Issuance of registration.

Except as otherwise provided in section 3304 (relating to denial of registration), the commission shall issue a certificate of registration to a person:

(1) Who complies with section 3302(a) and (c) (relating to application for registration).

(2) Whose application has been accepted under section 3302(b).

(3) Who is 21 years of age or older.

(4) Who possesses good moral character.

(5) Who neither at the time of application nor within ten years prior to the time of application has been finally found to have participated in any conduct that led to the imposition of sanctions against an individual or student athlete, institution of higher education or professional sports team by any association or organization that establishes rules for the conduct of amateur or professional sports.

§ 3304. Denial of registration.

(a) **Grounds.**—The commission may refuse to issue a certificate of registration if the commission determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to serve as an athlete agent. In making the determination, the commission may consider whether the applicant has:

(1) Made a materially false, misleading, deceptive or fraudulent representation as an athlete agent or in the application.

(2) Engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity.

(3) Engaged in conduct prohibited by section 3313 (relating to prohibited acts).

(4) Had a registration or licensure as an athlete agent suspended, revoked or denied or been refused renewal of registration or licensure in any state.

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

(b) Additional considerations.—In making a determination under subsection (a), the commission shall consider:

(1) How recently the conduct occurred.

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

(3) Any other relevant conduct of the applicant.

(c) Issuance of registration prohibited.—The commission shall not issue athlete agent registration to or renew the athlete agent registration of a person who has been convicted of any of the following offenses, or any comparable offense in another jurisdiction, within ten years of the date of application:

(1) An offense under the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

(2) An offense under the following provisions of 18 Pa.C.S. (relating to crimes and offenses):

Section 902 (relating to criminal solicitation).

Section 908 (relating to prohibited offensive weapons).

Section 2502 (relating to murder).

Section 2901 (relating to kidnapping).

Section 3121 (relating to rape).

Section 3126 (relating to indecent assault).

Section 3923 (relating to theft by extortion).

Section 4109 (relating to rigging publicly exhibited contest).

Section 4302 (relating to incest).

Section 4304 (relating to endangering welfare of children).

Section 4305 (relating to dealing in infant children).

Section 4701 (relating to bribery in official and political matters).

Section 4902 (relating to perjury).

Section 5501 (relating to riot).

Section 5504 (relating to harassment and stalking by communication or address).

Section 5512 (relating to lotteries, etc.).

Section 5513 (relating to gambling devices, gambling, etc.).

Section 5514 (relating to pool selling and bookmaking).

Section 5901 (relating to open lewdness).

Section 5902 (relating to prostitution and related offenses).

Section 5903 (relating to obscene and other sexual materials and performances).

Section 5904 (relating to public exhibition of insane or deformed person).

Section 6301 (relating to corruption of minors).

Section 6312 (relating to sexual abuse of children).

Section 7107 (relating to unlawful actions by athlete agents).

(3) The commission shall not issue registration to any person who has been found by the commission to have engaged in the activities of an athlete agent in this Commonwealth without acquiring registration as required by this chapter within 12 months prior to the date of application.

§ 3305. Renewal of registration.

(a) Procedure.—An athlete agent may apply to renew a registration by submitting an application for renewal in writing on a form supplied by the commission and approved by the department. The application for renewal must be in the name of an individual and be verified by the applicant and must state, contain or be accompanied by:

(1) Current information on all matters required in an original registration.

(2) Such other information as the commission may reasonably require.

(3) A processing fee of \$100.

(b) Out-of-state agents.—An individual who has submitted an application for renewal of registration or licensure in another state, in lieu of submitting an application for renewal in the form prescribed under subsection (a), may file a copy of the application for renewal and a valid certificate of registration from the other state. The commission shall accept the application for renewal from the other state as an application for renewal in this Commonwealth if the application to the other state:

(1) Was submitted to the other state within the last six months and the applicant certifies the information contained in the application for renewal is current.

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

(3) Was verified by the applicant.

(4) The unregistered out-of-State agent has never had¹ registration issued under this chapter or a predecessor statute revoked by the commission.

§ 3306. Period of registration.

¹“has” in enrolled bill.

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

§ 3307. Suspension, revocation, restriction or refusal to renew registration.

(a) Investigation.—The commission or its designee may review the operations of all registered athlete agents and shall prepare a written report for review by the commission.

(b) Cease and desist order.—The commission may issue an immediate cease and desist order against an athlete agent who has been found preliminarily by the commission to have committed a violation of 18 Pa.C.S. § 7107 (relating to unlawful actions by athlete agents) or a violation of this chapter. Within 20 days of issuance of the cease and desist order, the commission shall conduct a hearing to determine whether the cease and desist order should be dissolved or made permanent.

(c) Registration suspension, revocation, restriction or refusal to renew.—The commission may suspend, revoke, restrict or otherwise limit registration or refuse to renew a registration for conduct that would have justified denial of registration under section 3304(a) (relating to denial of registration).

(d) Notice and hearing.—The commission may deny, suspend, revoke, restrict or otherwise limit registration or refuse to renew a registration only after proper notice and an opportunity for a hearing in accordance with 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies).

(e) Reciprocal disciplinary or corrective action.—The commission may deny, suspend, revoke, restrict or otherwise limit registration or refuse to renew a registration of an athlete agent on the basis of a disciplinary or corrective action having been taken against the athlete agent in another state, territory, possession or country, a branch of the Federal Government or by an athletic association.

§ 3308. Fees.

(a) Amounts.—An application for registration or renewal of registration must be accompanied by a fee in the following amount:

(1) \$200 for an initial application for registration for an individual or sole proprietor and \$400 for a partnership, association, corporation or other legal entity.

(2) \$150 for an application for registration based upon a certificate of registration or licensure issued by another state for an individual or sole proprietor and \$300 for a partnership, association, corporation or other legal entity.

(3) \$200 for an application for renewal of registration for an individual or sole proprietor and \$400 for a partnership, association, corporation or other legal entity.

(4) \$150 for an application for renewal of registration based upon an application for renewal of registration or licensure submitted in another

state for an individual or sole proprietor and \$400 for a partnership, association, corporation or other legal entity.

(b) **Fee increase.**—If the revenues raised by fees, fines and civil penalties imposed in accordance with this chapter are not sufficient to match the expenditures necessary to carry out the provisions of this chapter, the commission shall increase those fees by regulation so that the revenues match the expenditures.

§ 3309. Form of contract for student athletes.

(a) **Form generally.**—An agency contract must be in a record and signed by the parties.

(b) **Contents.**—An agency contract must state or contain:

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

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

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

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

(5) The duration of the contract.

(6) The date of execution.

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

WARNING TO STUDENT ATHLETE

If you sign this contract:

(1) You may lose your eligibility to compete as a student athlete in your sport.

(2) Both you and your athlete agent are required to tell your athletic director, if you have an athletic director, and the commission within 72 hours after entering into an agency contract.

(3) You may cancel this contract within 14 days after signing it. Cancellation of the contract may not reinstate your eligibility.

(d) **Contracts not in conformity.**—An agency contract that does not conform to this section is voidable by the student athlete.

(e) **Contract copy to student athlete.**—The athlete agent shall give a copy of the signed agency contract to the student athlete at the time of signing.

§ 3310. Notice to educational institution.

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:

(1) 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 and to the commission.

(2) The student athlete shall inform the athletic director of the educational institution at which the student athlete is enrolled that the student athlete has entered into an agency contract and to the commission.

§ 3311. Student athlete's right to cancel.

(a) Procedure.—A student athlete may cancel an agency contract by giving notice in a record to the athlete agent of the cancellation within 14 days after the contract is signed.

(b) Waiver not permitted.—A student athlete may not waive the right to cancel an agency contract.

(c) Consideration.—If a student athlete cancels an agency contract, the student athlete is not required to pay any consideration under the contract or to return any consideration received from the agent to induce the student athlete to enter into the contract.

§ 3312. Required records.

(a) General rule.—An athlete agent shall retain the following records for a period of five years:

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

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

(3) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student athlete.

(b) Records open to inspection.—Records required by subsection (a) to be retained are open to inspection by the commission during normal business hours.

§ 3313. Prohibited acts.

An athlete agent may not:

(1) Initiate contact with a student athlete unless registered under this part.

(2) Refuse or willfully fail to retain or permit inspection of the records required by section 3312 (relating to required records).

(3) Violate section 3301 (relating to athlete agent registration) by failing to register.

(4) Provide materially false or misleading information in an application for registration or renewal of registration.

(5) Predate or postdate an agency contract.

(6) Fail to notify a student athlete prior to the student athlete's signing an agency contract for a particular sport that the signing by the student athlete may make the student athlete ineligible to participate as a student athlete in that sport.

(7) Enter into an oral or written contract or professional sport services contract with a student athlete before the student athlete's eligibility for collegiate athletics has expired.

(8) Before the student athlete's eligibility for collegiate athletics has expired, give, offer or promise anything of value to:

(i) a student athlete;

(ii) any member of the student athlete's immediate family; or

(iii) any individual who substantially contributes to the economic support of the student athlete. For purposes of this subparagraph, an individual shall be deemed to have substantially contributed to the economic support of a student athlete if the individual provides 25% or more of the cost of tuition, room and board and incidental expenses of the student athlete's education or provides to the student athlete at minimal or no cost non-college-based lodging or meals or transportation to and from college classes.

(9) Give, offer or promise an oral or written contract which would require the athlete agent to give, offer or promise anything of value to any employee of an institution of higher education in return for a referral of a student athlete by the employee.

(10) Engage in the activities of an athlete agent without a current valid registration.

(11) Violate any provision of this part or regulation of the commission.

§ 3314. Civil remedies.

(a) Right of action.—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 part or for a violation of 18 Pa.C.S. § 7107 (relating to unlawful actions by athlete agents). 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 activities of an athlete agent or former student athlete, the educational institution was injured by a violation of this part 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.

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

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

(e) Other rights and remedies.—This part does not restrict rights, remedies or defenses of any person under law.

§ 3315. Administrative penalty.

(a) **Civil penalty.**—The commission may assess a civil penalty against an athlete agent not to exceed \$25,000 per violation of this part or per violation of 18 Pa.C.S. § 7107 (relating to unlawful actions by athlete agents).

(b) **Injunctive relief.**—The commission may, in the name of the people of this Commonwealth, through the Office of Attorney General, apply for injunctive relief in any court of competent jurisdiction to enjoin any person from committing any act in violation of this chapter. Injunctive relief shall be in addition to and not in lieu of all penalties and other remedies in this chapter.

§ 3316. Bonding requirements.

(a) **Amount.**—Before any athlete agent registration is issued, the applicant shall be required to execute and file a surety bond with the commission in such reasonable amount, but not less than \$20,000, as the commission shall require.

(b) **Bond forms.**—All bonds shall be upon forms supplied by the commission and which have been approved by the department. All bonds shall be accompanied by a \$25 filing fee.

(c) **Conditions of bond.**—The surety bond shall be conditioned upon the following:

(1) Compliance with this chapter.

(2) The payment of all sums due a person at the time the sums are due and payable.

(3) The payment of damages suffered by any person as a result of intentional or unintentional misstatements, misrepresentation, fraud, deceit or unlawful or negligent acts of the student athlete agent while acting as a student athlete agent.

(d) **Alternate security.**—

(1) In lieu of a surety bond, a registrant may deposit with the commission cash, a certified check or a letter of credit in an equivalent amount. The provisions of this section regarding bonds shall apply to the alternate security provided for in this subsection.

(2) The security shall not be returned to a registrant until one year after the student athlete agent's registration has expired. After that time if there are no claims against the registered athlete agent, the alternate security shall be returned to the depositor.

(e) **Recovery on bond.**—Recovery may be had on a bond or deposit of alternate security in the same manner as penalties are recoverable at law.

§ 3317. Exemption from registration and bonding requirement.

(a) **Immediate family members.**—Athlete agents who are representing an immediate family member are exempt from the provisions of this chapter.

(b) **Definition.**—As used in this section, the term "immediate family" means a spouse, parent, sibling, son, daughter or grandparent.

§ 3318. Disposition of commission receipts.

All fees, civil penalties, forfeitures and other moneys collected under this chapter and the regulations of the commission shall be paid into the Athletic Commission Augmentation Account.

§ 3319. Records.

A record of all persons registered under this chapter shall be kept in the office of the commission and shall be open to public inspection and copying upon payment of a nominal fee for copying the record.

§ 3320. Transferability of registration.

No registration issued under this chapter shall be assignable or transferable. In the event of a corporate change of status, the entity must register within 90 days.

Section 3. This act shall take effect in 60 days.

APPROVED—The 9th day of December, A.D. 2002.

MARK S. SCHWEIKER