

SENATE BILL NO. 306
INTRODUCED BY D. RYAN

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE UNIFORM ATHLETE AGENTS ACT; PROVIDING FOR DEFINITIONS, SERVICE OF PROCESS, REGISTRATION OF ATHLETE AGENTS, AND CIVIL AND CRIMINAL PENALTIES; ESTABLISHING CONTRACT CRITERIA FOR ATHLETE AGENTS AND STUDENT-ATHLETES; PROVIDING FOR NOTICE TO THE STUDENT-ATHLETE'S EDUCATIONAL INSTITUTION OF A CONTRACT BETWEEN A STUDENT-ATHLETE AND AN ATHLETE AGENT; AND GIVING STUDENT-ATHLETES THE RIGHT TO CANCEL THE CONTRACT WITH AN ATHLETE AGENT."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 19] may be cited as the "Uniform Athlete Agents Act".

NEW SECTION. **Section 2. Definitions.** For the purposes of [sections 1 through 19], the following definitions apply:

(1) "Agency contract" means an agreement in which a student-athlete authorizes a person to negotiate or solicit a professional sports services contract or an endorsement contract on behalf of the student-athlete.

(2) (a) "Athlete agent" means an individual who enters into an agency contract with a student-athlete or, directly or indirectly, recruits or solicits a student-athlete to enter into an agency contract. The term includes an individual who represents to the public that the individual is an athlete agent.

(b) The term does not include a spouse, parent, sibling, grandparent, or legal guardian of the student-athlete or an individual acting solely on behalf of a professional sports team or professional sports organization.

(3) "Athletic director" means 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, as appropriate.

(4) "Board" means the board of athletics provided for in 2-15-1772.

(5) "Contact" means a communication, direct or indirect, between an athlete agent and a student-athlete to recruit or solicit the student-athlete to enter into an agency contract.

(6) "Endorsement contract" means an agreement under which a student-athlete is employed or receives consideration from another party based on the value to the other party that the student-athlete may have because of publicity, reputation, following, or fame obtained because of the student-athlete's athletic ability or performance.

(7) "Intercollegiate sport" means a sport played at the collegiate level with eligibility requirements for participation by a student-athlete established by a national association for the promotion or regulation of collegiate athletics.

(8) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental entity, or any other legal or commercial entity.

(9) "Professional sports services contract" means an agreement under which an individual is employed as or agrees to render services as a player on a professional sports team, as a member of a professional sports organization, or as a professional athlete.

(10) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(11) "Registration" means registration as an athlete agent pursuant to [sections 1 through 19].

(12) "State" means 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.

(13) "Student-athlete" means 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.

NEW SECTION. Section 3. Service of process -- subpoenas. (1) By acting as an athlete agent in this state, a nonresident individual appoints the secretary of state as the individual's agent for service of process in any civil action in this state related to the individual's actions as an athlete agent in this state.

(2) The board may issue subpoenas for any material that is relevant to the administration of [sections 1 through 19].

NEW SECTION. Section 4. Athlete agents -- registration required -- void contracts. (1) Except as provided in subsection (2), an individual may not act as an athlete agent in this state without holding a certificate of registration issued under [section 6 or 8].

(2) Before being issued a certificate of registration, an individual may act as an athlete agent in this state for all purposes except signing an agency contract if:

(a) a student-athlete or another person acting on behalf of the student-athlete initiates communication with the individual; and

(b) within 7 days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in this state.

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

NEW SECTION. Section 5. Registration as athlete agent -- form -- requirements. (1) An applicant shall submit an application for registration to the board in a form prescribed by the board. The application must be in the name of an individual and, except as provided in subsection (2), signed or otherwise authenticated by the applicant under penalty of perjury. The application must contain:

(a) the name of the applicant and the address of the applicant's principal place of business;

(b) the name of the applicant's business or employer, if applicable;

(c) any business or occupation engaged in by the applicant for the 5 years preceding the date of submission of the application;

(d) a description of the applicant's:

(i) formal training as an athlete agent;

(ii) practical experience as an athlete agent; and

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

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

(f) the name, sport, and last-known team for each individual for whom the applicant acted as an athlete agent during the 5 years preceding the date of submission of the application;

(g) if the applicant's business is other than a corporation, the names and addresses of all persons who are partners, members, officers, managers, or associates or who share profits of the business;

(h) if the applicant's business is a corporation, the names of any officers, directors, and any shareholder of the corporation having an interest of 5% or greater;

(i) whether the applicant or any person named pursuant to subsections (1)(g) and (1)(h) has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony and must identify the crime;

(j) whether there has been any administrative or judicial determination that the applicant or any person

named pursuant to subsections (1)(g) and (1)(h) has made a false, misleading, deceptive, or fraudulent representation;

(k) any instance in which the conduct of the applicant or any person named pursuant to subsections (1)(g) and (1)(h) resulted in the imposition of a sanction, suspension, or declaration of ineligibility for a student-athlete or educational institution to participate in an interscholastic or intercollegiate athletic event;

(l) any sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to subsections (1)(g) and (1)(h) arising out of occupational or professional conduct; and

(m) 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 person named pursuant to subsections (1)(g) and (1)(h) as an athlete agent in any state.

(2) An individual who has submitted an application for and holds a certificate of registration or licensure as an athlete agent in another state may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed by subsection (1). The board shall accept the application and the certificate from the other state as an application for registration in this state if the application to the other state:

(a) was submitted in the other state within 6 months preceding the submission of the application in this state and the applicant certifies that the information contained in the application is current;

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

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

NEW SECTION. Section 6. Certificate of registration -- issuance or denial -- renewal. (1) Except as provided in subsection (2), the board shall issue a certificate of registration to an individual who complies with [section 5(1)] or whose application has been accepted under [section 5(2)].

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

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

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

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

- (d) engaged in conduct prohibited by [section 14];
- (e) had a registration or license as an athlete agent suspended, revoked, or denied or been refused renewal of registration or licensure as an athlete agent in any state;
- (f) engaged in conduct the consequence of which was that a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event was imposed on a student-athlete or educational institution; or
- (g) engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty, or integrity.

(3) In making a determination under subsection (2), the board shall consider:

- (a) how recently the conduct occurred;
- (b) the nature of the conduct and the context in which it occurred; and
- (c) any other relevant conduct of the applicant.

(4) An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the board. The application for renewal must be signed by the applicant under penalty of perjury and must contain current information on all matters required in an original registration.

(5) 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 pursuant to subsection (4), may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. The board shall accept the application for renewal from the other state as an application for renewal in this state if the application to the other state:

- (a) was submitted in the other state within 6 months preceding the filing in this state and the applicant certifies the information contained in the application for renewal is current;
 - (b) contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this state; and
 - (c) was signed by the applicant under penalty of perjury.
- (6) A certificate of registration or a renewal of a registration is valid for 2 years.

NEW SECTION. Section 7. Suspension, revocation, or refusal to renew registration. (1) The board may suspend, revoke, or refuse to renew a registration for conduct that would have justified denial of registration under [section 6(2)].

(2) The board may deny, suspend, revoke, or refuse to renew a certificate of registration or licensure

only after proper notice and an opportunity for a hearing.

NEW SECTION. Section 8. Temporary registration. The board may issue a temporary certificate of registration while an application for registration or renewal of registration is pending.

NEW SECTION. Section 9. Registration and renewal fees. An application for registration or renewal of registration must be accompanied by a fee as set by the board. The fees set by the board must be commensurate with the costs of the board incurred in processing the applications for registration or renewal.

NEW SECTION. Section 10. Required form of contract. (1) An agency contract must be in a record and signed or otherwise authenticated by the parties.

(2) An agency contract must contain:

(a) 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;

(b) the name of any person not listed in the athlete agent's application for registration or renewal of registration who will be compensated because the student-athlete signed the agency contract;

(c) a description of any expenses that the student-athlete agrees to reimburse;

(d) a description of the services to be provided to the student-athlete;

(e) the duration of the contract; and

(f) the date of execution.

(3) 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) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT SHALL NOTIFY YOUR ATHLETIC DIRECTOR; AND

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

(4) 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.

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

NEW SECTION. Section 11. Notice to educational institution. (1) 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 at which the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.

(2) 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 the student-athlete has entered into an agency contract.

NEW SECTION. Section 12. Student-athlete's right to cancel. (1) 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.

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

(3) 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 athlete agent to induce the student-athlete to enter into the contract.

NEW SECTION. Section 13. Required records. (1) An athlete agent shall retain the following records for a period of 5 years:

(a) the name and address of each individual represented by the athlete agent;

(b) any agency contract entered into by the athlete agent; and

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

(2) Records required to be retained by subsection (1) must be open to inspection by the board during

normal business hours.

NEW SECTION. Section 14. Prohibited conduct. (1) An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, may not:

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

(b) furnish anything of value to a student-athlete before the student-athlete enters into the agency contract; or

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

(2) An athlete agent may not intentionally:

(a) initiate contact with a student-athlete unless registered under [sections 1 through 19];

(b) refuse or fail to retain or permit inspection of the records required to be retained by [section 13];

(c) fail to register when required by [section 4];

(d) provide materially false or misleading information in an application for registration or renewal of registration;

(e) predate or postdate an agency contract; or

(f) 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.

NEW SECTION. Section 15. Criminal penalties. An athlete agent who violates the provisions of [section 14] is guilty of a misdemeanor and may be imprisoned for a period not to exceed 1 year and may be fined up to \$5,000, or both.

NEW SECTION. Section 16. Civil remedies. (1) An educational institution has a right of action against an athlete agent or a former student-athlete for damages caused by a violation of [sections 1 through 19]. In an action under this section, the court may award to the prevailing party costs and reasonable attorney fees.

(2) Damages of an educational institution under subsection (1) 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 [sections 1 through 19] 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 a national organization or athletic conference.

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

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

(5) [Sections 1 through 19] are not intended to restrict any other rights, remedies, or defenses that a person may otherwise have under law or equity.

NEW SECTION. Section 17. Administrative penalty. The board may assess a civil penalty against an athlete agent not to exceed \$25,000 for a violation of [sections 1 through 19].

NEW SECTION. Section 18. Uniformity of application and construction. In applying and construing [sections 1 through 19], consideration must be given to the need to promote uniformity of the law with respect to the subject matter of [sections 1 through 19] among the states adopting provisions similar to Montana's Uniform Athlete Agents Act.

NEW SECTION. Section 19. Electronic signatures. The provisions of [sections 1 through 19] governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of electronic records or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act, Public Law 106-229, 114 Stat. 464.

NEW SECTION. Section 20. Codification instruction. [Sections 1 through 19] are intended to be codified as an integral part of Title 23, and the provisions of Title 23 apply to [sections 1 through 19].

NEW SECTION. Section 21. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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