
A BILL FOR AN ACT

RELATING TO THE UNIFORM ATHLETE AGENTS ACT.

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

1 SECTION 1. The purpose of this Act is to enact the Uniform
2 Athlete Agents Act. The legislature finds that the Act, which
3 was developed by the National Conference of Commissioners on
4 Uniform State Laws, protects student-athletes and educational
5 institutions by regulating the way sports agents deal with
6 students on an initial agency agreement. The Act requires
7 agents to register with the state department of commerce and
8 consumer affairs and to disclose current business information
9 and any negative history, such as a loss of licensure, an
10 administrative sanction, or a finding of conduct causing
11 eligibility violations. This Act protects both student-athletes
12 and schools by requiring specific warnings about the potential
13 loss of eligibility to appear in the contract and by requiring
14 both the agent and the student-athlete to notify the affected
15 school if an agreement is signed.

16 In September 2004, the federal Sports Agent Responsibility
17 and Trust Act (P.L. 108-304) was enacted and signed into law.
18 The federal law prohibits certain acts and practices by athlete



1 agents as unfair and deceptive trade practices and gives both
2 the Federal Trade Commission as well as the states jurisdiction
3 to enforce these provisions. Recognizing that there is more to
4 be done at the state level, the Congress included a "sense of
5 Congress" statement as section 8 of that Act stating: "It is
6 the sense of Congress that States should enact the Uniform
7 Athlete Agents Act...drafted by the National Conference of
8 Commissioners on Uniform State Laws, to protect student athletes
9 and the integrity of amateur sports from unscrupulous sports
10 agents. In particular, it is the sense of Congress that States
11 should enact the provisions relating to the registration of
12 sports agents, the required form of contract, the right of the
13 student athlete to cancel an agency contract, the disclosure
14 requirements relating to record maintenance, reporting, renewal,
15 notice, warning, and security, and the provisions for
16 reciprocity among the States."

17 The legislature therefore finds it appropriate to enact the
18 Uniform Athlete Agents Act as an important corollary to the
19 recently enacted federal legislation to ensure that appropriate
20 protections are provided to Hawaii's student athletes and
21 educational institutions.



1 Lastly, the Legislature recognizes that new regulatory
2 measures that will subject an unregulated profession or vocation
3 to licensing or other regulatory controls, such as the one
4 created under this Act, are normally subject to a sunrise
5 analysis by the auditor.

6 In a sunrise analysis, the auditor sets forth the probable
7 effects of a proposed regulatory measure, assesses whether its
8 enactment is consistent with the policies of the Hawaii
9 regulatory licensing reform act, and assesses alternative forms
10 of regulation.

11 The legislature acknowledges that consumers in the State
12 have not reported any harm or damage sustained from athlete
13 agents. However, the legislature intends to enact regulation of
14 athlete agents before any consumers can sustain harm from them
15 and to deter unethical agents from leaving states where
16 regulation is in place and relocating their operations in an as
17 yet unregulated Hawaii. Accordingly, a sunrise analysis in this
18 instance would simply amount to a waste of time and resources.
19 The legislature therefore expressly exempts this Act from a
20 sunrise analysis under section 26H-6, Hawaii Revised Statutes.



1 SECTION 2. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 UNIFORM ATHLETE AGENTS ACT

6 § -1 **Short title.** This chapter may be cited as the
7 Uniform Athlete Agents Act.

8 § -2 **Definitions.** As used in this chapter:

9 "Agency contract" means an agreement in which a student-
10 athlete authorizes a person to negotiate or solicit on behalf of
11 the student-athlete a professional-sports-services contract or
12 an endorsement contract.

13 "Athlete agent" means an individual who enters into an
14 agency contract with a student-athlete or, directly or
15 indirectly, recruits or solicits a student-athlete to enter into
16 an agency contract. The term includes an individual who
17 represents to the public that the individual is an athlete
18 agent. The term does not include a spouse, parent, sibling,
19 grandparent, or guardian of the student-athlete or an individual
20 acting solely on behalf of a professional sports team or
21 professional sports organization.



1 "Athletic director" means an individual responsible for
2 administering the overall athletic program of an educational
3 institution or, if an educational institution has separately
4 administered athletic programs for male students and female
5 students, the athletic program for males or the athletic program
6 for females, as appropriate.

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

10 "Director" means the director of commerce and consumer
11 affairs.

12 "Endorsement contract" means an agreement under which a
13 student-athlete is employed or receives consideration to use on
14 behalf of the other party any value that the student-athlete may
15 have because of publicity, reputation, following, or fame
16 obtained because of athletic ability or performance.

17 "Intercollegiate sport" means a sport played at the
18 collegiate level for which eligibility requirements for
19 participation by a student-athlete are established by a national
20 association for the promotion or regulation of collegiate
21 athletics.



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

6 "Professional-sports-services contract" means an agreement
7 under which an individual is employed, or agrees to render
8 services, as a player on a professional sports team, with a
9 professional sports organization, or as a professional athlete.

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

13 "Registration" means registration as an athlete agent
14 pursuant to this chapter.

15 "State" means a State of the United States, the District of
16 Columbia, Puerto Rico, the United States Virgin Islands, or any
17 territory or insular possession subject to the jurisdiction of
18 the United States.

19 "Student-athlete" means an individual who engages in, is
20 eligible to engage in, or may be eligible in the future to
21 engage in, any intercollegiate sport. If an individual is
22 permanently ineligible to participate in a particular



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

3 § -3 **Service of process; subpoenas.** (a) By acting as
4 an athlete agent in this State, a nonresident individual
5 appoints the director as the individual's agent for service of
6 process in any civil action in this State related to the
7 individual's acting as an athlete agent in this State.

8 (b) The director may issue subpoenas for any material that
9 is relevant to the administration of this chapter.

10 § -4 **Athlete agents: registration required; void**
11 **contracts.** (a) Except as otherwise provided in subsection (b),
12 an individual may not act as an athlete agent in this State
13 without holding a certificate of registration under section
14 -6 or -8.

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

18 (1) A student-athlete or another person acting on behalf
19 of the student-athlete initiates communication with
20 the individual; and



1 (2) Within seven days after an initial act as an athlete
2 agent, the individual submits an application for
3 registration as an athlete agent in this State.

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

7 § -5 **Registration as athlete agent; form; requirements.**

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

- 16 (1) The name of the applicant and the address of the
17 applicant's principal place of business;
- 18 (2) The name of the applicant's business or employer, if
19 applicable;
- 20 (3) Any business or occupation engaged in by the applicant
21 for the five years next preceding the date of
22 submission of the application;

- 1 (4) A description of the applicant's:
 - 2 (A) Formal training as an athlete agent;
 - 3 (B) Practical experience as an athlete agent; and
 - 4 (C) Educational background relating to the
 - 5 applicant's activities as an athlete agent;
- 6 (5) The names and addresses of three individuals not
- 7 related to the applicant who are willing to serve as
- 8 references;
- 9 (6) The name, sport, and last known team for each
- 10 individual for whom the applicant acted as an athlete
- 11 agent during the five years next preceding the date of
- 12 submission of the application;
- 13 (7) The names and addresses of all persons who are:
 - 14 (A) With respect to the athlete agent's business if
 - 15 it is not a corporation, the partners, members,
 - 16 officers, managers, associates, or profit-sharers
 - 17 of the business; and
 - 18 (B) With respect to a corporation employing the
 - 19 athlete agent, the officers, directors, and any
 - 20 shareholder of the corporation having an interest
 - 21 of five per cent or greater;



- 1 (8) Whether the applicant or any person named pursuant to
2 paragraph (7) has been convicted of a crime that, if
3 committed in this State, would be a crime involving
4 moral turpitude or a felony, and identify the crime;
- 5 (9) Whether there has been any administrative or judicial
6 determination that the applicant or any person named
7 pursuant to paragraph (7) has made a false,
8 misleading, deceptive, or fraudulent representation;
- 9 (10) Any instance in which the conduct of the applicant or
10 any person named pursuant to paragraph (7) resulted in
11 the imposition of a sanction, suspension, or
12 declaration of ineligibility to participate in an
13 interscholastic or intercollegiate athletic event on a
14 student-athlete or educational institution;
- 15 (11) Any sanction, suspension, or disciplinary action taken
16 against the applicant or any person named pursuant to
17 paragraph (7) arising out of occupational or
18 professional conduct; and
- 19 (12) Whether there has been any denial of an application
20 for, suspension or revocation of, or refusal to renew,
21 the registration or licensure of the applicant or any



1 person named pursuant to paragraph (7) as an athlete
2 agent in any state.

3 (b) An individual who has submitted an application for,
4 and holds a certificate of, registration or licensure as an
5 athlete agent in another state, may submit a copy of the
6 application and certificate in lieu of submitting an application
7 in the form prescribed pursuant to subsection (a). The director
8 shall accept the application and the certificate from the other
9 state as an application for registration in this State if the
10 application to the other state:

11 (1) Was submitted in the other state within six months
12 next preceding the submission of the application in
13 this State and the applicant certifies that the
14 information contained in the application is current;

15 (2) Contains information substantially similar to or more
16 comprehensive than that required in an application
17 submitted in this State; and

18 (3) Was signed by the applicant under penalty of perjury
19 or of a related offense in the other state.

20 § -6 **Certificate of registration; issuance or denial;**

21 **renewal.** (a) Except as otherwise provided in subsection (b),
22 the director shall issue a certificate of registration to an



1 individual who complies with section -5(a) or whose
2 application has been accepted under section -5(b).

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

- 9 (1) Been convicted of a crime that, if committed in this
10 State, would be a crime involving moral turpitude or a
11 felony;
- 12 (2) Made a materially false, misleading, deceptive, or
13 fraudulent representation in the application or as an
14 athlete agent;
- 15 (3) Engaged in conduct that would disqualify the applicant
16 from serving in a fiduciary capacity;
- 17 (4) Engaged in conduct prohibited by section -14;
- 18 (5) Had a registration or licensure as an athlete agent
19 suspended, revoked, or denied or been refused renewal
20 of registration or licensure as an athlete agent in
21 any state;



1 (6) Engaged in conduct the consequence of which was that a
2 sanction, suspension, or declaration of ineligibility
3 to participate in an interscholastic or
4 intercollegiate athletic event was imposed on a
5 student-athlete or educational institution; or

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

9 (c) In making a determination under subsection (b), the
10 director shall consider:

11 (1) How recently the conduct occurred;

12 (2) The nature of the conduct and the context in which it
13 occurred; and

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

15 (d) An athlete agent may apply to renew a registration by
16 submitting an application for renewal in a form prescribed by
17 the director. An application filed under this section is a
18 public record. The application for renewal must be signed by
19 the applicant under penalty of perjury or of unsworn
20 falsification to authorities, as applicable, and must contain
21 current information on all matters required in an original
22 registration.



1 (e) An individual who has submitted an application for
 2 renewal of registration or licensure in another state, in lieu
 3 of submitting an application for renewal in the form prescribed
 4 pursuant to subsection (d), may file a copy of the application
 5 for renewal and a valid certificate of registration or licensure
 6 from the other state. The director shall accept the application
 7 for renewal from the other state as an application for renewal
 8 in this State if the application to the other state:

- 9 (1) Was submitted in the other state within six months
 10 next preceding the filing in this State and the
 11 applicant certifies the information contained in the
 12 application for renewal is current;
- 13 (2) Contains information substantially similar to or more
 14 comprehensive than that required in an application for
 15 renewal submitted in this State; and
- 16 (3) Was signed by the applicant under penalty of perjury
 17 or of a related offense in the other state.

18 (f) A certificate of registration or a renewal of a
 19 registration is valid for two years.

20 **§ -7 Suspension, revocation, or refusal to renew**
 21 **registration.** (a) The director may suspend, revoke, or refuse



1 to renew a registration for conduct that would have justified
2 denial of registration under section -6(b).

3 (b) The director may deny, suspend, revoke, or refuse to
4 renew a certificate of registration or licensure only after
5 proper notice and an opportunity for a hearing pursuant to
6 chapter 91.

7 § -8 **Temporary registration.** The director may issue a
8 temporary certificate of registration while an application for
9 registration or renewal of registration is pending.

10 § -9 **Registration and renewal fees.** An application for
11 registration or renewal of registration must be accompanied by a
12 fee in the following amount:

- 13 (1) \$25 for an initial application for registration;
- 14 (2) \$20 for an application for registration based upon a
15 certificate of registration or licensure issued by
16 another state;
- 17 (3) \$25 for an application for renewal of registration; or
- 18 (4) \$20 for an application for renewal of registration
19 based upon an application for renewal of registration
20 or licensure submitted in another state.



1 § -10 **Required form of contract.** (a) An agency
2 contract must be in a record, signed or otherwise authenticated
3 by the parties.

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

5 (1) The amount and method of calculating the consideration
6 to be paid by the student-athlete for services to be
7 provided by the athlete agent under the contract and
8 any other consideration the athlete agent has received
9 or will receive from any other source for entering
10 into the contract or for providing the services;

11 (2) The name of any person not listed in the application
12 for registration or renewal of registration who will
13 be compensated because the student-athlete signed the
14 agency contract;

15 (3) A description of any expenses that the student-athlete
16 agrees to reimburse;

17 (4) A description of the services to be provided to the
18 student-athlete;

19 (5) The duration of the contract; and

20 (6) The date of execution.



1 (c) An agency contract must contain, in close proximity to
2 the signature of the student-athlete, a conspicuous notice in
3 boldface type in capital letters stating:

4 **WARNING TO STUDENT-ATHLETE**

5 **IF YOU SIGN THIS CONTRACT:**

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

8 (2) **IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS**
9 **AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE**
10 **AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND**

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

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

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



1 § -11 **Notice to educational institution.** (a) Within
2 seventy-two hours after entering into an agency contract or
3 before the next scheduled athletic event in which the student-
4 athlete may participate, whichever occurs first, the athlete
5 agent shall give notice in a record of the existence of the
6 contract to the athletic director of the educational institution
7 at which the student-athlete is enrolled or the athlete agent
8 has reasonable grounds to believe the student-athlete intends to
9 enroll.

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

16 § -12 **Student-athlete's right to cancel.** (a) A
17 student-athlete may cancel an agency contract by giving notice
18 of the cancellation to the athlete agent in a record within
19 fourteen days after the contract is signed.

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



1 (c) If a student-athlete cancels an agency contract, the
2 student-athlete is not required to pay any consideration under
3 the contract or to return any consideration received from the
4 athlete agent to induce the student-athlete to enter into the
5 contract.

6 § -13 **Required records.** (a) An athlete agent shall
7 retain the following records for a period of five years:

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

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

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

15 (b) Records required by subsection (a) to be retained
16 shall be open to inspection by the director during normal
17 business hours.

18 § -14 **Prohibited conduct.** (a) An athlete agent, with
19 the intent to induce a student-athlete to enter into an agency
20 contract, may not:

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



- 1 (2) Furnish anything of value to a student-athlete before
- 2 the student-athlete enters into the agency contract;
- 3 or
- 4 (3) Furnish anything of value to any individual other than
- 5 the student-athlete or another registered athlete
- 6 agent.
- 7 (b) An athlete agent may not intentionally:
- 8 (1) Initiate contact with a student-athlete unless
- 9 registered under this chapter;
- 10 (2) Refuse or fail to retain or permit inspection of the
- 11 records required to be retained by section -13;
- 12 (3) Fail to register when required by section -4;
- 13 (4) Provide materially false or misleading information in
- 14 an application for registration or renewal of
- 15 registration;
- 16 (5) Predate or postdate an agency contract; or
- 17 (6) Fail to notify a student-athlete before the student-
- 18 athlete signs or otherwise authenticates an agency
- 19 contract for a particular sport that the signing or
- 20 authentication may make the student-athlete ineligible
- 21 to participate as a student-athlete in that sport.



1 § **-15 Criminal penalties.** An athlete agent who violates
2 section -14 is guilty of a misdemeanor.

3 § **-16 Civil remedies.** (a) An educational institution
4 has a right of action against an athlete agent or a former
5 student-athlete for damages caused by a violation of this
6 chapter. In an action under this section, the court may award
7 to the prevailing party costs and reasonable attorney's fees.

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

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



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

3 (e) This chapter does not restrict rights, remedies, or
4 defenses of any person under law or equity.

5 § -17 **Administrative penalty.** The director may assess a
6 civil penalty against an athlete agent not to exceed \$25,000 for
7 a violation of this chapter.

8 § -18 **Uniformity of application and construction.** In
9 applying and construing this chapter, consideration shall be
10 given to the need to promote uniformity of the law with respect
11 to its subject matter among states that enact it.

12 § -19 **Electronic Signatures in Global and National**
13 **Commerce Act.** The provisions of this chapter governing the
14 legal effect, validity, or enforceability of electronic records
15 or signatures, and of contracts formed or performed with the use
16 of such records or signatures conform to the requirements of
17 section 102 of the Electronic Signatures in Global and National
18 Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000), and
19 supersede, modify, and limit the Electronic Signatures in Global
20 and National Commerce Act."

21 SECTION 3. This Act shall be exempt from the analysis in
22 section 26H-6, Hawaii Revised Statutes.



H.B. NO. 2440

1 SECTION 4. This Act shall take effect on July 1, 2006.

2

INTRODUCED BY: *rw*

JAN 23 2006



Report Title:

Uniform Athletes Agents Act; Registration

Description:

Enacts the Uniform Athlete Agents Act to protect student-athletes and educational institutions. Provides for registration of athlete agents, the required form of contract, the right of the student athlete to cancel an agency contract, disclosure requirements relating to record maintenance, reporting, renewal, notice, warning, and security. Provides for reciprocity among the States. Exempts the Act from a sunrise review.

