

GOV. MSG. NO. 1019

EXECUTIVE CHAMBERS

HONOLULU

GOVERNOR

July 3, 2007

The Honorable Colleen Hanabusa, President and Members of the Senate Twenty-Fourth State Legislature State Capitol, Room 409 Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on July 3, 2007, the following bill was signed into law:

HB275 HD1 SD2 CD1

A BILL FOR AN ACT RELATING TO THE UNIFORM ATHLETE AGENTS ACT. (ACT 248)

Sincerely,

LINDA LINGLE

Approved by the Governor on _______ JUL 3 2007

HOUSE OF REPRESENTATIVES TWENTY-FOURTH LEGISLATURE, 2007 STATE OF HAWAII

ACT 248 H.B. NO. ²⁷⁵ H.D. 1 S.D. 2 C.D. 1

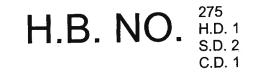
A BILL FOR AN ACT

RELATING TO THE UNIFORM ATHLETE AGENTS ACT.

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

The purpose of this Act is to enact the Uniform 1 SECTION 1. The legislature finds that the Uniform 2 Athlete Agents Act. 3 Athlete Agents Act, which was developed by the National Conference of Commissioners on Uniform State Laws, protects 4 student-athletes and educational institutions by regulating the 5 way sports agents deal with students on an initial agency 6 This Act requires agents to register with the 7 agreement. department of commerce and consumer affairs and to disclose 8 current business information and any negative history, such as a 9 loss of licensure, an administrative sanction, or a finding of 10 conduct causing eligibility violations. This Act protects both 11 student-athletes and schools by requiring specific warnings 12 about the potential loss of eligibility to appear in the 13 contract and by requiring both the athlete agent and the 14 student-athlete to notify the affected school if an agreement is 15 16 signed.

17 In September 2004, the federal Sports Agent Responsibility
18 and Trust Act (P.L. 108-304) was enacted into law. This federal HB275 CD1 HMS 2007-4104

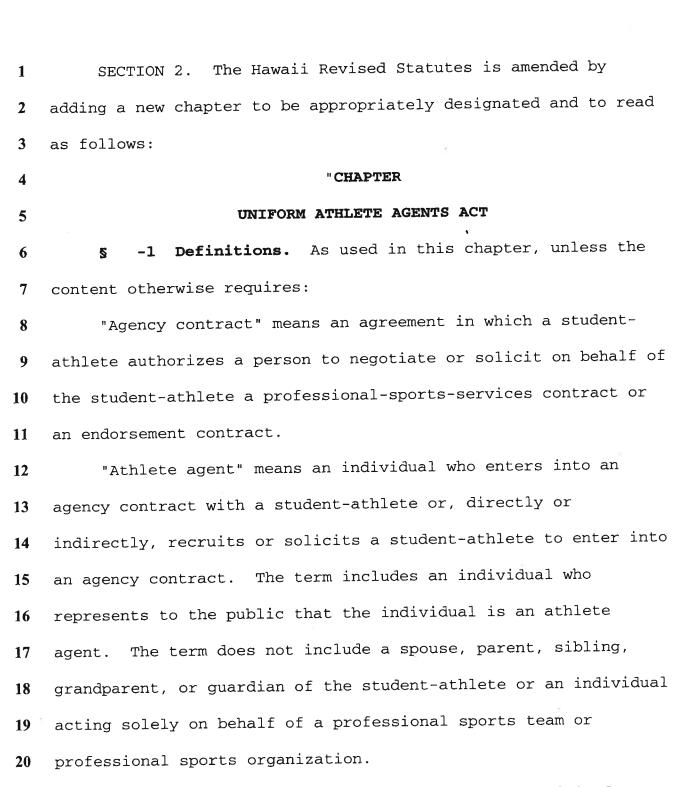


law prohibits certain acts and practices by athlete agents as 1 unfair and deceptive trade practices and gives the Federal Trade 2 Commission, as well as the states, jurisdiction to enforce these 3 provisions. Recognizing that there is more to be done at the 4 state level, the Congress included a "sense of Congress" 5 statement in section 8 of that Act stating, "It is the sense of 6 Congress that States should enact the Uniform Athlete Agents Act 7 of 2000 drafted by the National Conference of Commissioners on 8 Uniform State Laws, to protect student-athletes and the 9 integrity of amateur sports from unscrupulous sports agents. In 10 particular, it is the sense of Congress that States should enact 11 the provisions relating to the registration of sports agents, 12 the required form of contract, the right of the student-athlete 13 to cancel an agency contract, the disclosure requirements 14 relating to record maintenance, reporting, renewal, notice, 15 warning, and security, and the provisions for reciprocity among 16 the States." 17

18 The legislature therefore finds it appropriate to enact the 19 Uniform Athlete Agents Act as an important corollary to the 20 recently-enacted federal legislation to ensure that appropriate 21 protections are provided to Hawaii's student-athletes and 22 educational institutions.

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21 "Athletic director" means an individual responsible for
22 administering the overall athletic program of an educational



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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.

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5 "Contact" means a communication, direct or indirect,
6 between an athlete agent and a student-athlete, to recruit or
7 solicit the student-athlete to enter into an agency contract.
8 "Director" means the director of commerce and consumer
9 affairs.

10 "Endorsement contract" means an agreement under which a 11 student-athlete is employed or receives consideration to use, on 12 behalf of the other party, any value that the student-athlete 13 may have because of publicity, reputation, following, or fame 14 obtained because of athletic ability or performance.

15 "Intercollegiate sport" means a sport played at the 16 collegiate level for which eligibility requirements for 17 participation by a student-athlete are established by a national 18 association for the promotion or regulation of collegiate 19 athletics.

20 "Person" means an individual, corporation, business trust,
21 estate, trust, partnership, limited liability company,
22 association, joint venture, government, governmental



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subdivision, agency, or instrumentality, public corporation, or
 any other legal or commercial entity.

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

7 "Record" means information that is inscribed on a tangible
8 medium or that is stored in an electronic or other medium and is
9 retrievable in perceivable form.

10 "Registration" means registration as an athlete agent11 pursuant to this chapter.

12 "State" means a state of the United States, the District of 13 Columbia, Puerto Rico, the United States Virgin Islands, or any 14 territory or insular possession subject to the jurisdiction of 15 the United States.

16 "Student-athlete" means an individual who engages in, is 17 eligible to engage in, or may be eligible in the future to 18 engage in, any intercollegiate sport. If an individual is 19 permanently ineligible to participate in a particular 20 intercollegiate sport, the individual is not a student-athlete 21 for purposes of that sport.



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1 -2 Service of process; subpoenas. (a) By acting as S an athlete agent in this State, a nonresident individual 2 appoints the director as the individual's agent for service of 3 process in any civil action in this State related to the 4 5 individual's acting as an athlete agent in this State. The director may issue subpoenas for any material that 6 (b) 7 is relevant to the administration of this chapter. 8 -3 Athlete agents: registration required; void S 9 contracts. (a) Except as otherwise provided in subsection (b), an individual may not act as an athlete agent in this State 10 without holding a certificate of registration under section 11 12 -5 or -7. Before being issued a certificate of registration, an 13 (b) individual may act as an athlete agent in this State for all 14 purposes except signing an agency contract, if: 15 16 (1) A student-athlete or another person acting on behalf of the student-athlete initiates communication with 17 the individual; and 18 Within seven days after an initial act as an athlete 19 (2) agent, the individual submits an application for 20 registration as an athlete agent in this State. 21



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(c) 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.

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4 -4 Registration as athlete agent; form; requirements. 5 5 An applicant for registration shall submit an application (a) for registration to the director in a form prescribed by the 6 7 director. An application filed under this section is a 8 government record. The application shall be in the name of an 9 individual and, except as otherwise provided in subsection (b), 10 signed or otherwise authenticated by the applicant under penalty 11 of perjury or of unsworn falsification to authorities, as 12 applicable, and shall state or contain: 13 The name of the applicant and the address of the (1)14 applicant's principal place of business; 15 (2) The name of the applicant's business or employer, if 16 applicable; 17 (3) Any business or occupation engaged in by the applicant 18 for the five years next preceding the date of 19 submission of the application; 20 A description of the applicant's: (4)

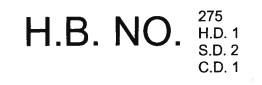
21 (A) Formal training as an athlete agent;

(B) Practical experience as an athlete agent; and



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| 1 | | (C) Educational background relating to the |
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| 2 | | applicant's activities as an athlete agent; |
| 3 | (5) | The names and addresses of three individuals not |
| 4 | | related to the applicant who are willing to serve as |
| 5 | | references; |
| 6 | (6) | The name, sport, and last known team for each |
| 7 | | individual for whom the applicant acted as an athlete |
| 8 | | agent during the five years next preceding the date of |
| 9 | | submission of the application; |
| 10 | (7) | The names and addresses of all persons who are: |
| 11 | | (A) With respect to the athlete agent's business if |
| 12 | | it is not a corporation, the partners, members, |
| 13 | | officers, managers, associates, or profit-sharers |
| 14 | | of the business; and |
| 15 | | (B) With respect to a corporation employing the |
| 16 | | athlete agent, the officers, directors, and any |
| 17 | | shareholder of the corporation having an interest |
| 18 | | of five per cent or greater; |
| 19 | (8) | Whether the applicant or any person named pursuant to |
| 20 | | paragraph (7) has been convicted of a crime that, if |
| 21 | | committed in this State, would be a crime involving |
| 22 | | moral turpitude or a felony, and identify the crime; |
| | | |



Whether there has been any administrative or judicial 1 (9) determination that the applicant or any person named 2 3 pursuant to paragraph (7) has made a false, misleading, deceptive, or fraudulent representation; 4 5 Any instance in which the conduct of the applicant or (10)any person named pursuant to paragraph (7) resulted in 6 7 the imposition on a student-athlete or educational 8 institution of a sanction, suspension, or declaration 9 of ineligibility to participate in an interscholastic 10 or intercollegiate athletic event; Any sanction, suspension, or disciplinary action taken 11 (11)

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12 against the applicant or any person named pursuant to 13 paragraph (7) arising out of occupational or

14 professional conduct; and

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

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



application and certificate in lieu of submitting an application
in the form prescribed pursuant to subsection (a). The director
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:

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Was submitted in the other state within the six months 6 (1)7 next preceding the submission of the application in this State and the applicant certifies that the 8 information contained in the application is current; 9 Contains information substantially similar to or more 10 (2)comprehensive than that required in an application 11 submitted in this State; and 12

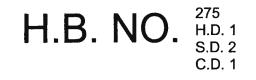
13 (3) Was signed by the applicant under penalty of perjury14 or of a related offense in the other state.

15 § -5 Certificate of registration; issuance or denial;
16 renewal. (a) Except as otherwise provided in subsection (b),
17 the director shall issue a certificate of registration to an
18 individual who complies with section -4(a) or whose
19 application has been accepted under section -4(b).

(b) The director may refuse to issue a certificate of
registration if the director determines that the applicant has
engaged in conduct that has a significantly adverse effect on



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the applicant's fitness to act as an athlete agent. In making 1 2 the determination, the director may consider whether the 3 applicant has: Been convicted of a crime that, if committed in this 4 (1) State, would be a crime involving moral turpitude or a 5 6 felony; Made a materially false, misleading, deceptive, or 7 (2) fraudulent representation in the application or as an 8 athlete agent; 9 Engaged in conduct that would disqualify the applicant 10 (3) from serving in a fiduciary capacity; 11 Engaged in conduct prohibited by section -13; (4) 12 Had a registration or licensure as an athlete agent 13 (5) suspended, revoked, or denied or been refused renewal 14 15 of registration or licensure as an athlete agent in any state; 16 Engaged in conduct the consequence of which was that a 17 (6) sanction, suspension, or declaration of ineligibility 18 to participate in an interscholastic or 19 intercollegiate athletic event was imposed on a 20 student-athlete or educational institution; or 21



Engaged in conduct that significantly adversely 1 (7) reflects on the applicant's credibility, honesty, or 2 3 integrity. In making a determination under subsection (b), the 4 (C) director shall consider: 5 How recently the conduct occurred; 6 (1)The nature of the conduct and the context in which it 7 (2)occurred; and 8 Any other relevant conduct of the applicant. (3) 9 An athlete agent may apply to renew a registration by 10 (d) submitting an application for renewal in a form prescribed by 11 the director. An application filed under this section is a 12 government record. The application for renewal shall be signed 13 by the applicant under penalty of perjury or of unsworn 14 falsification to authorities, as applicable, and shall contain 15 current information on all matters required in an original 16 17 registration. An individual who has submitted an application for 18 (e)

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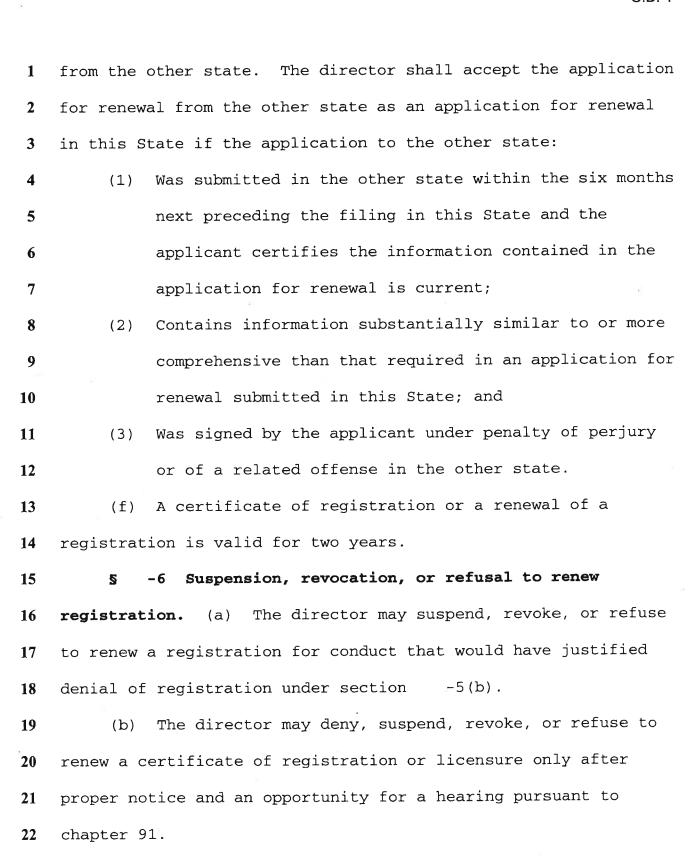
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19 renewal of registration or licensure in another state, in lieu 20 of submitting an application for renewal in the form prescribed 21 pursuant to subsection (d), may file a copy of the application 22 for renewal and a valid certificate of registration or licensure



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

-8 Fees and expenses. No applicant or registrant 4 S shall be issued a certificate of registration unless the 5 appropriate fees have been paid. Unless otherwise provided by 6 law, the director shall establish the amount of all fees and 7 expenses by rules adopted pursuant to chapter 91, and the fees 8 shall be deposited with the director to the credit of the 9 compliance resolution fund established pursuant to section 10 26-9(0). 11

12 S -9 Required form of contract. (a) An agency contract
13 shall be in a record, signed or otherwise authenticated by the
14 parties.

An agency contract shall state or contain: (b) 15 The amount and method of calculating the consideration (1)16 to be paid by the student-athlete for services to be 17 provided by the athlete agent under the contract and 18 any other consideration the athlete agent has received 19 or will receive from any other source for entering 20 into the contract or for providing the services; 21

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| 1 | (2) | The name of any person not listed in the application | | |
| 2 | | for registration or renewal of registration who will | | |
| 3 | | be compensated because the student-athlete signed the | | |
| 4 | | agency contract; | | |
| 5 | (3) | A description of any expenses that the student-athlete | | |
| 6 | | agrees to reimburse; | | |
| 7 | (4) | A description of the services to be provided to the | | |
| 8 | | student-athlete; | | |
| 9 | (5) | The duration of the contract; and | | |
| 10 | (6) | The date of execution. | | |
| 11 | (c) | An agency contract shall contain, in close proximity | | |
| 12 | to the si | gnature of the student-athlete, a conspicuous notice in | | |
| 13 | boldface | type in capital letters stating: | | |
| 14 | | WARNING TO STUDENT-ATHLETE | | |
| 15 | IF YOU SI | IF YOU SIGN THIS CONTRACT: | | |
| 16 | (1) | YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT- | | |
| 17 | | ATHLETE IN YOUR SPORT; | | |
| 18 | (2) | IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS | | |
| 19 | | AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR | | |
| 20 | | ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND | | |



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

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4 (d) An agency contract that does not conform to this 5 section is voidable by the student-athlete. If a student-6 athlete voids an agency contract, the student-athlete is not 7 required to pay any consideration under the contract or to 8 return any consideration received from the athlete agent to 9 induce the student-athlete to enter into the contract.

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

-10 Notice to educational institution. (a) Within 13 S 14 seventy-two hours after entering into an agency contract or 15 before the next scheduled athletic event in which the studentathlete may participate, whichever occurs first, the athlete 16 17 agent shall give notice in a record of the existence of the 18 contract to the athletic director of the educational institution at which the student-athlete is enrolled or at which the athlete 19 20 agent has reasonable grounds to believe the student-athlete 21 intends to enroll.

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(b) Within seventy-two 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 or intends
 to enroll that the student-athlete has entered into an agency
 contract.

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8 § -11 Student-athlete's right to cancel. (a) A
9 student-athlete may cancel an agency contract by giving notice
10 of the cancellation to the athlete agent in a record within
11 fourteen days after the contract is signed.

12 (b) A student-athlete may not waive the right to cancel an13 agency contract.

(c) 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.

19 § -12 Required records. (a) An athlete agent shall
20 retain the following records for a period of five years:

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



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| 1 | (2) | Any agency contract entered into by the athlete agent; |
|----|-----------|--|
| 2 | | and |
| 3 | (3) | Any direct costs incurred by the athlete agent in the |
| 4 | | recruitment or solicitation of a student-athlete to |
| 5 | | enter into an agency contract. |
| 6 | (b) | Records required by subsection (a) to be retained |
| 7 | shall be | open to inspection by the director during normal |
| 8 | business | hours. |
| 9 | S | -13 Prohibited conduct. (a) An athlete agent, with |
| 10 | the inten | t to induce a student-athlete to enter into an agency |
| 11 | contract, | may not: |
| 12 | (1) | Give any materially false or misleading information or |
| 13 | | make a materially false promise or representation; |
| 14 | (2) | Furnish anything of value to a student-athlete before |
| 15 | | the student-athlete enters into the agency contract; |
| 16 | | or |
| 17 | (3) | Furnish anything of value to any individual other than |
| 18 | | the student-athlete or another registered athlete |
| 19 | | agent. |
| 20 | (b) | An athlete agent may not intentionally: |
| 21 | (1) | Initiate contact with a student-athlete unless |
| 22 | | registered under this chapter; |
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| 1 | (2) | Refuse or fail to retain or permit inspection of the | |
| 2 | | records required to be retained by section -12; | |
| 3 | (3) | Fail to register when required by section $-3;$ | |
| 4 | (4) | Provide materially false or misleading information in | |
| 5 | | an application for registration or renewal of | |
| 6 | | registration; | |
| 7 | (5) | Predate or postdate an agency contract; or | |
| 8 | (6) | Fail to notify a student-athlete before the student- | |
| 9 | | athlete signs or otherwise authenticates an agency | |
| 10 | | contract for a particular sport that the signing or | |
| 11 | | authentication may make the student-athlete ineligible | |
| 12 | | to participate as a student-athlete in that sport. | |
| 13 | S | -14 Criminal penalties. An athlete agent who violates | |
| 14 | section | -13 is guilty of a misdemeanor. | |
| 15 | S. | -15 Civil remedies. (a) An educational institution | |
| 16 | has a rig | ht of action against an athlete agent or a former | |
| 17 | student-a | thlete for damages caused by a violation of this | |
| 18 | chapter. | In an action under this section, the court may award | |
| 19 | to the pr | evailing party costs and reasonable attorney's fees. | |
| 20 | (b) | Damages of an educational institution under subsection | |
| 21 | (a) inclu | de losses and expenses incurred because, as a result of | |
| 22 | the conduct of an athlete agent or former student-athlete, the | | |
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educational institution was injured by a violation of this
 chapter or was penalized, disqualified, or suspended from
 participation in athletics by a national association for the
 promotion or regulation of athletics, by an athletic conference,
 or by reasonable self-imposed disciplinary action taken to
 mitigate sanctions likely to be imposed by such an organization.

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

11 (d) Any liability of the athlete agent or the former12 student-athlete under this section is several and not joint.

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

15 S -16 Civil penalty. Any person who violates any 16 provision of this chapter or its rules shall be fined not more 17 than \$25,000 for each offense, and each day's violation or 18 failure to comply shall be deemed a separate offense. Fines 19 shall be deposited with the director to the credit of the 20 compliance resolution fund pursuant to section 26-9(0). Unless 21 otherwise expressly provided, the remedies or penalties provided



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by this chapter are cumulative to each other and to the remedies
 or penalties available under all other laws of this State.

3 § -17 Uniformity of application and construction. In
4 applying and construing this chapter, consideration shall be
5 given to the need to promote uniformity of the law with respect
6 to its subject matter among states that enact it.

7 -18 Electronic Signatures in Global and National S 8 Commerce Act. The provisions of this chapter governing the 9 legal effect, validity, or enforceability of electronic records 10 or signatures, and of contracts formed or performed with the use of such records or signatures conform to the requirements of 11 12 section 102 of the Electronic Signatures in Global and National 13 Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000), and 14 supersede, modify, and limit the Electronic Signatures in Global 15 and National Commerce Act.

16 § -19 Rules. The director may adopt, amend, and repeal 17 rules that the director considers necessary or expedient for the 18 regulation and oversight of this chapter. The rules, when 19 adopted pursuant to chapter 91, shall have the force and effect 20 of law."

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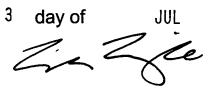
SECTION 3. This Act shall take effect on July 1, 2008.



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, 2007

APPROVED this ³ day of



GOVERNOR OF THE STATE OF HAWAII