

By: Senator(s) Hamilton

To: Judiciary

SENATE BILL NO. 2312
(As Sent to Governor)

1 AN ACT ENTITLED THE UNIFORM ATHLETE AGENTS ACT; TO PROVIDE
2 DEFINITIONS; TO REQUIRE REGISTRATION FOR ATHLETE AGENTS; TO
3 PROVIDE FOR A CERTIFICATE OF REGISTRATION ISSUED OR DENIED BY THE
4 SECRETARY OF STATE; TO PROVIDE FOR THE SUSPENSION, REVOCATION OR
5 REFUSAL TO RENEW REGISTRATION; TO PROVIDE FOR TEMPORARY
6 REGISTRATION; TO PROVIDE FOR FEES; TO PROVIDE FOR THE FORM OF AN
7 AGENCY CONTRACT; TO PROVIDE FOR NOTICE TO EDUCATIONAL
8 INSTITUTIONS; TO PROVIDE FOR THE STUDENT ATHLETE'S RIGHT TO CANCEL
9 A CONTRACT; TO PROVIDE FOR RECORDKEEPING; TO PROHIBIT CERTAIN
10 ACTS; TO PROVIDE CRIMINAL AND CIVIL PENALTIES FOR VIOLATIONS OF
11 THIS ACT; TO REPEAL SECTIONS 73-41-1 THROUGH 73-41-23, MISSISSIPPI
12 CODE OF 1972, WHICH ARE THE ATHLETE AGENTS' REGISTRATION
13 REQUIREMENTS ADMINISTERED BY THE SECRETARY OF STATE; AND FOR
14 RELATED PURPOSES.

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

16 SECTION 1. **Short Title.** This act may be cited as the
17 "Uniform Athlete Agents Act."

18 SECTION 2. **Definitions.** In this act:

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

23 (b) "Athlete agent" means an individual who enters into
24 an agency contract with a student-athlete or, directly or
25 indirectly, recruits or solicits a student-athlete to enter into
26 an agency contract. The term does not include a spouse, parent,
27 sibling, grandparent or guardian of the student-athlete or an
28 individual acting solely on behalf of a professional sports team
29 or professional sports organization. The term includes an
30 individual who represents to the public that the individual is an
31 athlete agent.

32 (c) "Athletic director" means an individual responsible
33 for administering the overall athletic program of an educational
34 institution or, if an educational institution has separately
35 administered athletic programs for male students and female
36 students, the athletic program for males or the athletic program
37 for females, as appropriate.

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

42 (e) "Endorsement contract" means an agreement under
43 which a student-athlete is employed or receives consideration to
44 use on behalf of the other party any value that the
45 student-athlete may have because of publicity, reputation,
46 following, or fame obtained because of athletic ability or
47 performance.

48 (f) "Intercollegiate sport" means a sport played at the
49 collegiate level for which eligibility requirements for
50 participation by a student-athlete are established by a national
51 association for the promotion or regulation of collegiate
52 athletics.

53 (g) "Person" means an individual, corporation, business
54 trust, estate, trust, partnership, limited liability company,
55 association, joint venture, government; governmental subdivision,
56 agency or instrumentality; public corporation, or any other legal
57 or commercial entity.

58 (h) "Professional-sports-services contract" means an
59 agreement under which an individual is employed or agrees to
60 render services as a player on a professional sports team, with a
61 professional sports organization, or as a professional athlete.

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

65 (j) "Registration" means registration as an athlete
66 agent pursuant to this act.

67 (k) "State" means a state of the United States, the
68 District of Columbia, Puerto Rico, the United States Virgin
69 Islands, or any territory or insular possession subject to the
70 jurisdiction of the United States.

71 (l) "Student-athlete" means an individual who engages
72 in, is eligible to engage in, or may be eligible in the future to
73 engage in, any intercollegiate sport. If an individual is
74 permanently ineligible to participate in a particular
75 intercollegiate sport, the individual is not a student-athlete for
76 purposes of that sport.

77 **SECTION 3. Administration; service of process; subpoenas.**

78 (1) The Secretary of State shall administer this act.

79 (2) By engaging in the business of an athlete agent in this
80 state, a nonresident individual appoints the Secretary of State as
81 the individual's agent to accept service of process in any civil
82 action related to the individual's business as an athlete agent in
83 this state.

84 (3) The Secretary of State may issue subpoenas for any
85 relevant material under this act.

86 **SECTION 4. Athlete agents: registration required. (1)**

87 Except as otherwise provided in subsection (2), an individual may
88 not act as an athlete agent in this state before being issued a
89 certificate of registration under Section 6 or 8.

90 (2) An individual may act as an athlete agent before being
91 issued a certificate of registration for all purposes except
92 signing an agency contract if:

93 (a) A student-athlete or another acting on behalf of
94 the student-athlete initiates communication with the individual;
95 and

96 (b) Within seven (7) days after an initial act as an
97 athlete agent, the individual submits an application to register
98 as an athlete agent in this state.

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

102 SECTION 5. Registration as athlete agent; form;

103 **requirements.** (1) An applicant for registration shall submit an
104 application for registration to the Secretary of State in a form
105 prescribed by the Secretary of State. An application filed under
106 this section is a public record. Except as otherwise provided in
107 subsection (2), the application must be in the name of an
108 individual and signed by the applicant under penalty of perjury
109 and must state or contain:

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

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

114 (c) Any business or occupation engaged in by the
115 applicant for the five (5) years next preceding the date of
116 submission of the application;

117 (d) A description of the applicant's:

118 (i) Formal training as an athlete agent;

119 (ii) Practical experience as an athlete agent; and

120 (iii) Educational background relating to the
121 applicant's activities as an athlete agent.

122 (e) The names and addresses of three (3) individuals
123 not related to the applicant who are willing to serve as
124 references;

125 (f) The name, sport and last known team for each
126 individual for whom the applicant provided services as an athlete
127 agent during the five (5) years next preceding the date of
128 submission of the application;

129 (g) The names and addresses of all persons who are:

130 (i) With respect to the athlete agent's business
131 if it is not a corporation, the partners, officers, associates or
132 profit-sharers; and

133 (ii) With respect to a corporation employing the
134 athlete agent, the officers, directors and any shareholder of the
135 corporation with a five percent (5%) or greater interest.

136 (h) Whether the applicant or any other person named
137 pursuant to paragraph (g) has been convicted of a crime that, if
138 committed in this state, would be a felony or other crime
139 involving moral turpitude, and identify the crime;

140 (i) Whether there has been any administrative or
141 judicial determination that the applicant or any other person
142 named pursuant to paragraph (g) has made a false, misleading,
143 deceptive or fraudulent representation;

144 (j) Any instance in which the conduct of the applicant
145 or any other person named pursuant to paragraph (g) resulted in
146 the imposition of a sanction, suspension or declaration of
147 ineligibility to participate in an interscholastic or
148 intercollegiate athletic event on a student-athlete or educational
149 institution;

150 (k) Any sanction, suspension or disciplinary action
151 taken against the applicant or any other person named pursuant to
152 paragraph (g) arising out of occupational or professional conduct;
153 and

154 (l) Whether there has been any denial of an application
155 for, suspension or revocation of, or refusal to renew, the
156 registration or licensure of the applicant or any other person
157 named pursuant to paragraph (g) as an athlete agent in any state.

158 (2) An individual who has submitted an application for, and
159 received a certificate of, registration or licensure as an athlete
160 agent in another state, may submit a copy of the application and a
161 valid certificate of registration or licensure from the other

162 state in lieu of submitting an application in the form prescribed
163 pursuant to subsection (1). The Secretary of State shall accept
164 the application and the certificate from the other state as an
165 application for registration in this state if the application to
166 the other state:

167 (a) Was submitted in the other state within the six (6)
168 months next preceding the submission of the application in this
169 state and the applicant certifies the information contained in the
170 application is current;

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

174 (c) Was signed by the applicant under penalty of
175 perjury.

176 **SECTION 6. Certificate of registration; issuance or denial;**
177 **renewal.** (1) Except as otherwise provided in subsection (3), the
178 Secretary of State shall issue a certificate of registration to an
179 individual who complies with Section 5(1).

180 (2) Except as otherwise provided in subsection (3), the
181 Secretary of State shall issue a certificate of registration to an
182 individual whose application has been accepted under Section 5(2).

183 (3) The Secretary of State may refuse to issue a certificate
184 of registration if the Secretary of State determines that the
185 applicant has engaged in conduct that has a significant adverse
186 effect on the applicant's fitness to serve as an athlete agent.
187 In making the determination, the Secretary of State may consider
188 whether the applicant has:

189 (a) Been convicted of a crime that, if committed in
190 this state, would be a felony or other crime involving moral
191 turpitude;

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

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

197 (d) Engaged in conduct prohibited by Section 14;

198 (e) Had a registration or licensure as an athlete agent
199 suspended, revoked, or denied or been refused renewal of
200 registration or licensure in any state;

201 (f) Engaged in conduct or failed to engage in conduct
202 the consequence of which was that a sanction, suspension or
203 declaration of ineligibility to participate in an interscholastic
204 or intercollegiate athletic event was imposed on a student-athlete
205 or educational institution; or

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

208 (4) In making a determination under subsection (3), the
209 Secretary of State shall consider:

210 (a) How recently the conduct occurred;

211 (b) The nature of the conduct and the context in which
212 it occurred; and

213 (c) Any other relevant conduct of the applicant.

214 (5) An athlete agent may apply to renew a registration by
215 submitting an application for renewal in a form prescribed by the
216 Secretary of State. An application filed under this section is a
217 public record. The application for renewal must be signed by the
218 applicant under penalty of perjury and must contain current
219 information on all matters required in an original registration.

220 (6) An individual who has submitted an application for
221 renewal of registration or licensure in another state, in lieu of
222 submitting an application for renewal in the form prescribed
223 pursuant to subsection (5), may file a copy of the application for
224 renewal and a valid certificate of registration from the other
225 state. The Secretary of State shall accept the application for
226 renewal from the other state as an application for renewal in this
227 state if the application to the other state:

228 (a) Was submitted in the other state within the last
229 six (6) months and the applicant certifies the information
230 contained in the application for renewal is current;

231 (b) Contains information substantially similar to or
232 more comprehensive than that required in an application for
233 renewal submitted in this state; and

234 (c) Was signed by the applicant under penalty of
235 perjury.

236 (7) A certificate of registration or a renewal of a
237 registration is valid for two (2) years.

238 **SECTION 7. Suspension, revocation or refusal to renew**

239 **registration.** (1) The Secretary of State may suspend, revoke or
240 refuse to renew a registration for conduct that would have
241 justified denial of registration under Section 6(3).

242 (2) The Secretary of State may deny, suspend, revoke or
243 refuse to renew a registration only after proper notice and an
244 opportunity for a hearing.

245 (3) (a) The Secretary of State shall appoint at least one
246 (1) hearing officer for the purpose of holding hearings, compiling
247 evidence and rendering decisions under this section and Section 6
248 of this act. The hearing officer shall fix the date for
249 adjudicatory hearings and notify the athlete agent involved. Such
250 hearing shall be held at a location to be designated by the
251 hearing officer, not less than fifteen (15) nor more than thirty
252 (30) days after the mailing of notice to the athlete agent
253 involved. At the conclusion of the hearing, the hearing officer
254 shall take appropriate action regarding the registration of the
255 athlete agent involved.

256 (b) Any athlete agent whose application for
257 registration has been denied or not renewed, or whose registration
258 has been revoked or suspended by the hearing officer, within
259 thirty (30) days after the date of such final decision, shall have
260 the right of a trial de novo on appeal to the Circuit Court of the

261 First Judicial District of Hinds County, Mississippi. Either
262 party shall have the right of appeal to the Supreme Court as
263 provided by law from any decision of the circuit court. No
264 athlete agent shall be allowed to deliver services to a
265 Mississippi NCAA athlete while any such appeal is pending.

266 (4) In addition to the reasons specified in subsection (1)
267 and (2) of this section, the secretary shall be authorized to
268 suspend the registration of any person for being out of compliance
269 with an order for support, as defined in Section 93-11-153. The
270 procedure for suspension of a registration for being out of
271 compliance with an order for support, and the procedure for the
272 reissuance or reinstatement of a registration suspended for that
273 purpose, and the payment of any fees for the reissuance or
274 reinstatement of a registration suspended for that purpose, shall
275 be governed by Section 93-11-157 or 93-11-163, as the case may be.
276 Actions taken by the secretary in suspending the registration of a
277 person when required by Section 93-11-157 are not actions from
278 which an appeal may be taken under this section. Any appeal of a
279 registration suspension that is required by Section 93-11-157 or
280 93-11-163 shall be taken in accordance with the appeal procedure
281 specified in Section 93-11-157 or 93-11-163, as the case may be,
282 rather than the procedure specified in this section. If there is
283 any conflict between any provision of Section 93-11-157 or
284 93-11-163 and any provision of this chapter, the provisions of
285 Section 93-11-157 or 93-11-163, as the case may be, shall control.

286 SECTION 8. Temporary registration. The Secretary of State
287 may issue a temporary certificate of registration while an
288 application for registration or renewal is pending.

289 SECTION 9. Registration and renewal fee. An application for
290 registration or renewal of registration must be accompanied by a
291 fee in the following amount:

292 (a) One Hundred Dollars (\$100.00) for an initial
293 application for registration;

294 (b) One Hundred Dollars (\$100.00) for an application
295 for registration based upon a certificate of registration or
296 licensure issued by another state;

297 (c) Fifty Dollars (\$50.00) for an application for
298 renewal of registration; or

299 (d) Fifty Dollars (\$50.00) for an application for
300 renewal of registration based upon an application for renewal of
301 registration or licensure submitted in another state.

302 SECTION 10. Form of contract. (1) An agency contract must
303 be in a record, signed by the parties.

304 (2) An agency contract must state or contain:

305 (a) The amount and method of calculating the
306 consideration to be paid by the student-athlete for services to be
307 provided by the athlete agent under the contract and any other
308 consideration the athlete agent has received or will receive from
309 any other source for entering into the contract or for providing
310 the services;

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

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

316 (d) A description of the services to be provided to the
317 student-athlete;

318 (e) The duration of the contract; and

319 (f) The date of execution.

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

323 **WARNING TO STUDENT-ATHLETE**

324 **IF YOU SIGN THIS CONTRACT:**

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

327 (2) BOTH YOU AND YOUR ATHLETE AGENT ARE REQUIRED TO TELL
328 YOUR ATHLETIC DIRECTOR, IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN
329 72 HOURS AFTER ENTERING INTO AN AGENCY CONTRACT; AND

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

333 (4) An agency contract that does not conform to this section
334 is voidable by the student-athlete.

335 (5) The athlete agent shall give a copy of the signed agency
336 contract to the student-athlete at the time of signing.

337 SECTION 11. Notice to educational institution. (1) Within
338 seventy-two (72) hours after entering into an agency contract or
339 before the next scheduled athletic event in which the
340 student-athlete may participate, whichever occurs first, the
341 athlete agent shall give notice in a record of the existence of
342 the contract to the athletic director of the educational
343 institution at which the student-athlete is enrolled or the
344 athlete agent has reasonable grounds to believe the
345 student-athlete intends to enroll.

346 (2) Within seventy-two (72) hours after entering into an
347 agency contract or before the next athletic event in which the
348 student-athlete may participate, whichever occurs first, the
349 student-athlete shall inform the athletic director of the
350 educational institution at which the student-athlete is enrolled
351 that he or she has entered into an agency contract.

352 SECTION 12. Student-athlete's right to cancel. (1) A
353 student-athlete may cancel an agency contract by giving notice in
354 a record to the athlete agent of the cancellation within fourteen
355 (14) days after the contract is signed.

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

358 (3) If a student-athlete cancels an agency contract, the
359 student-athlete is not required to pay any consideration under the

360 contract or to return any consideration received from the agent to
361 induce the student-athlete to enter into the contract.

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

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

366 (b) Any agency contract entered into by the athlete
367 agent; and

368 (c) Any direct costs incurred by the athlete agent in
369 the recruitment or solicitation of a student-athlete.

370 (2) Records required by subsection (1) to be retained are
371 open to inspection by the Secretary of State during normal
372 business hours.

373 SECTION 14. Prohibited acts. (1) An athlete agent may not
374 do any of the following with the intent to induce a
375 student-athlete to enter into an agency contract:

376 (a) Give any materially false or misleading information
377 or make a materially false promise or representation;

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

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

382 (2) An athlete agent may not intentionally:

383 (a) Initiate contact with a student-athlete unless
384 registered under this act;

385 (b) Refuse or willfully fail to retain or permit
386 inspection of the records required by Section 13;

387 (c) Violate Section 4 by failing to register;

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

390 (e) Predate or postdate an agency contract; or

391 (f) Fail to notify a student-athlete prior to the
392 student-athlete's signing an agency contract for a particular

393 sport that the signing by the student-athlete may make the
394 student-athlete ineligible to participate as a student-athlete in
395 that sport.

396 SECTION 15. Criminal penalties. The commission of any act
397 prohibited by Section 14 by an athlete agent is a felony
398 punishable by a fine of not more than Ten Thousand Dollars
399 (\$10,000.00) or by imprisonment of not more than two (2) years, or
400 both.

401 SECTION 16. Civil remedies. (1) An educational institution
402 has a right of action against an athlete agent or a former
403 student-athlete for damages caused by a violation of this act. In
404 an action under this section, the court may award to the
405 prevailing party costs and reasonable attorney's fees.

406 (2) Damages of an educational institution under subsection
407 (1) include losses and expenses incurred because, as a result of
408 the activities of an athlete agent or former student-athlete, the
409 educational institution was injured by a violation of this act or
410 was penalized, disqualified or suspended from participation in
411 athletics by a national association for the promotion and
412 regulation of athletics, by an athletic conference, or by
413 reasonable self-imposed disciplinary action taken to mitigate
414 sanctions.

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

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

421 (5) This act does not restrict rights, remedies or defenses
422 of any person under law or equity.

423 SECTION 17. Administrative penalty. The Secretary of State
424 may assess a civil penalty against an athlete agent not to exceed

425 Twenty-five Thousand Dollars (\$25,000.00) for a violation of this
426 act.

427 SECTION 18. **Application and construction.** In applying and
428 construing this uniform act, consideration must be given to the
429 need to promote uniformity of the law with respect to its subject
430 matter of this act among states that enact it.

431 SECTION 19. Sections 73-41-1, 73-41-3, 73-41-5, 73-41-7,
432 73-41-9, 73-41-11, 73-41-13, 73-41-15, 73-41-17, 73-41-19,
433 73-41-21 and 73-41-23, Mississippi Code of 1972, which are the
434 athlete agents' registration requirements administered by the
435 Secretary of State, are hereby repealed.

436 SECTION 20. This act shall take effect and be in force from
437 and after July 1, 2001.