



GOV. MSG. NO. 1019

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
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,

A handwritten signature in black ink, appearing to read "Linda Lingle".

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:

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



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

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.



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 Definitions. As used in this chapter, unless the
7 content otherwise requires:

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

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

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



1 institution or, if an educational institution has separately
2 administered athletic programs for male students and female
3 students, the athletic program for males or the athletic program
4 for females, as appropriate.

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



1 subdivision, agency, or instrumentality, public corporation, or
2 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 agent
11 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.



1 **§ -2 Service of process; subpoenas.** (a) By acting as
2 an athlete agent in this State, a nonresident individual
3 appoints the director as the individual's agent for service of
4 process in any civil action in this State related to the
5 individual's acting as an athlete agent in this State.

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

8 **§ -3 Athlete agents: registration required; void**
9 **contracts.** (a) Except as otherwise provided in subsection (b),
10 an individual may not act as an athlete agent in this State
11 without holding a certificate of registration under section
12 -5 or -7.

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

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

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



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

4 **§ -4 Registration as athlete agent; form; requirements.**

5 (a) An applicant for registration shall submit an application
6 for registration to the director in a form prescribed by the
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 (1) The name of the applicant and the address of the
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 (4) A description of the applicant's:

21 (A) Formal training as an athlete agent;

22 (B) Practical experience as an athlete agent; and



- 1 (C) Educational background relating to the
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;



- 1 (9) Whether there has been any administrative or judicial
2 determination that the applicant or any person named
3 pursuant to paragraph (7) has made a false,
4 misleading, deceptive, or fraudulent representation;
- 5 (10) Any instance in which the conduct of the applicant or
6 any person named pursuant to paragraph (7) resulted in
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;
- 11 (11) Any sanction, suspension, or disciplinary action taken
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



1 application and certificate in lieu of submitting an application
2 in the form prescribed pursuant to subsection (a). The director
3 shall accept the application and the certificate from the other
4 state as an application for registration in this State if the
5 application to the other state:

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

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



1 the applicant's fitness to act as an athlete agent. In making
2 the determination, the director may consider whether the
3 applicant has:

4 (1) Been convicted of a crime that, if committed in this
5 State, would be a crime involving moral turpitude or a
6 felony;

7 (2) Made a materially false, misleading, deceptive, or
8 fraudulent representation in the application or as an
9 athlete agent;

10 (3) Engaged in conduct that would disqualify the applicant
11 from serving in a fiduciary capacity;

12 (4) Engaged in conduct prohibited by section -13;

13 (5) Had a registration or licensure as an athlete agent
14 suspended, revoked, or denied or been refused renewal
15 of registration or licensure as an athlete agent in
16 any state;

17 (6) Engaged in conduct the consequence of which was that a
18 sanction, suspension, or declaration of ineligibility
19 to participate in an interscholastic or
20 intercollegiate athletic event was imposed on a
21 student-athlete or educational institution; or



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

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

- 6 (1) How recently the conduct occurred;
- 7 (2) The nature of the conduct and the context in which it
8 occurred; and
- 9 (3) Any other relevant conduct of the applicant.

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

18 (e) An individual who has submitted an application for
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



1 from the other state. The director shall accept the application
2 for renewal from the other state as an application for renewal
3 in this State if the application to the other state:

4 (1) Was submitted in the other state within the six months
5 next preceding the filing in this State and the
6 applicant certifies the information contained in the
7 application for renewal is current;

8 (2) Contains information substantially similar to or more
9 comprehensive than that required in an application for
10 renewal submitted in this State; and

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

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

15 **§ -6 Suspension, revocation, or refusal to renew**

16 **registration.** (a) The director may suspend, revoke, or refuse
17 to renew a registration for conduct that would have justified
18 denial of registration under section -5(b).

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



1 **§ -7 Temporary registration.** The director may issue a
2 temporary certificate of registration while an application for
3 registration or renewal of registration is pending.

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

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

15 (b) An agency contract shall state or contain:

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



- 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 signature of the student-athlete, a conspicuous notice in
 13 boldface type in capital letters stating:

14 **"WARNING TO STUDENT-ATHLETE**

15 **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**



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

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.

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



1 (b) Within seventy-two hours after entering into an agency
2 contract or before the next athletic event in which the student-
3 athlete may participate, whichever occurs first, the student-
4 athlete shall inform the athletic director of the educational
5 institution at which the student-athlete is enrolled or intends
6 to enroll that the student-athlete has entered into an agency
7 contract.

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 an
13 agency contract.

14 (c) If a student-athlete cancels an agency contract, the
15 student-athlete is not required to pay any consideration under
16 the contract or to return any consideration received from the
17 athlete agent to induce the student-athlete to enter into the
18 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;



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 **§ -13 Prohibited conduct.** (a) An athlete agent, with
10 the intent 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;



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 § -14 **Criminal penalties.** An athlete agent who violates
14 section -13 is guilty of a misdemeanor.

15 § -15 **Civil remedies.** (a) An educational institution
16 has a right of action against an athlete agent or a former
17 student-athlete for damages caused by a violation of this
18 chapter. In an action under this section, the court may award
19 to the prevailing party costs and reasonable attorney's fees.

20 (b) Damages of an educational institution under subsection
21 (a) include losses and expenses incurred because, as a result of
22 the conduct of an athlete agent or former student-athlete, the



1 educational institution was injured by a violation of this
2 chapter or was penalized, disqualified, or suspended from
3 participation in athletics by a national association for the
4 promotion or regulation of athletics, by an athletic conference,
5 or by reasonable self-imposed disciplinary action taken to
6 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 former
12 student-athlete under this section is several and not joint.

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

15 **§ -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(o). Unless
21 otherwise expressly provided, the remedies or penalties provided



1 by this chapter are cumulative to each other and to the remedies
2 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**
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
11 of such records or signatures conform to the requirements of
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."

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



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

APPROVED this 3 day of JUL , 2007



GOVERNOR OF THE STATE OF HAWAII