

JAN 19 2007

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# 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. The Act requires agents to register with the state  
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 agent and the student-athlete  
15 to notify the affected 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 into law. This federal  
18 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 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 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



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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 "Interscholastic 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 of a sanction, suspension, or  
8           declaration of ineligibility to participate in an  
9           interscholastic or intercollegiate athletic event, on  
10          a student-athlete or educational institution;
- 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 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 significant adverse effect on the



1 applicant's fitness to act as an athlete agent. In making the  
2 determination, the director may consider whether the applicant  
3 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 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 ATHLETE**  
20 **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 REINSTATE  
3 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 the athlete agent  
20 has reasonable grounds to believe the student-athlete intends to  
21 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 that the  
6 student-athlete has entered into an agency contract.

7           §   -11 **Student-athlete's right to cancel.** (a) A  
8 student-athlete may cancel an agency contract by giving notice  
9 of the cancellation to the athlete agent in a record within  
10 fourteen days after the contract is signed.

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

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

18           §   -12 **Required records.** (a) An athlete agent shall  
19 retain the following records for a period of five years:

20           (1) The name and address of each individual represented by  
21               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 and regulation of athletics, by an athletic  
5 conference, or by reasonable self-imposed disciplinary action  
6 taken to mitigate sanctions likely to be imposed by such an  
7 organization.

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

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

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

16 § -16 **Civil penalty.** Any person who violates any  
17 provision of this chapter or its rules shall be fined not more  
18 than \$25,000 for each offense and each day's violation or  
19 failure to comply shall be deemed a separate offense. Unless  
20 otherwise expressly provided, the remedies or penalties provided  
21 by this chapter are cumulative to each other and to the remedies  
22 or penalties available under all other laws of this State.



1           §   -17   **Uniformity of application and construction.**  In  
 2 applying and construing this chapter, consideration shall be  
 3 given to the need to promote uniformity of the law with respect  
 4 to its subject matter among states that enact it.

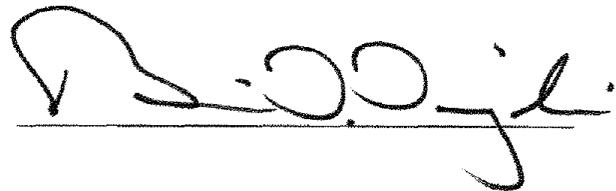
5           §   -18   **Electronic Signatures in Global and National**  
 6 **Commerce Act.**  The provisions of this chapter governing the  
 7 legal effect, validity, or enforceability of electronic records  
 8 or signatures, and of contracts formed or performed with the use  
 9 of such records or signatures conform to the requirements of  
 10 section 102 of the Electronic Signatures in Global and National  
 11 Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000), and  
 12 supersede, modify, and limit the Electronic Signatures in Global  
 13 and National Commerce Act.

14           §   -19   **Rules.**  The director may adopt, amend, and repeal  
 15 rules that the director considers necessary or expedient for the  
 16 regulation and oversight of this chapter.  The rules when  
 17 adopted pursuant to chapter 91 shall have the force and effect  
 18 of law."

19           SECTION 3.  This Act shall take effect on July 1, 2007.

20

INTRODUCED BY:




**Report Title:**

Uniform Athlete Agents Act; Student-Athletes; Athlete Agents

**Description:**

Enacts the Uniform Athlete Agents Act to protect student-athletes and educational institutions from potential harm caused by unscrupulous athlete agents. Requires athlete agents to register with department of commerce and consumer affairs.

