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UNSCRUPULOUS AGENTS AND THE AMATEUR ATHLETE

*James C. Crowley IV**
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I. INTRODUCTION

America is sports crazy. National corporations use sports stars to promote their products. Television companies fill weekend broadcast time with professional and collegiate basketball, football and baseball as well as numerous other sports like golf, bowling, and auto racing. Sports trading cards, autographed collectibles and officially licensed sporting apparel generate huge revenues.

The mass marketing appeal of sports and sport stars has led to increasing profits, resulting in escalating salaries for professional athletes¹ and larger fees for sports agents. For example, former University of Notre Dame football player Raghil "Rocket" Ismail, now with the Los Angeles Raiders of the National Football League, originally signed out of college for a reported \$26,000,000 multi-year contract with the Toronto Argonauts of the Canadian Football League.² An agent who charged the standard three percent fee to negotiate the contract would have received approximately \$800,000. The possibility of earning that amount of money for representing athletes is inviting. So inviting in fact, that it has lead some agents to use unscrupulous and illegal tactics to convince athletes to sign personal representation contracts with them.

The illegal activities of several agents in college football are well documented. In October of 1986 agent David Lueddeke paid Cris Carter, then an Ohio State wide receiver, \$5000 to sign a representation contract.³ This action violated National Collegiate Athletic Association (NCAA)

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1. See R. BERRY & G. WONG, *LAW AND BUSINESS OF THE SPORTS INDUSTRIES* § 1.30 (1986).

2. Bruce Dowbiggin, *The Wizard of Awe*, *TORONTO STAR*, Sept. 14, 1991, at K1.

3. *Agent Sentenced to 26 Months*, *CHI. TRIB.*, Apr. 29, 1989, at C4.

regulations and several state laws.⁴ In 1987, Alabama sports agent Jim Abernethy violated NCAA rules by giving Auburn University cornerback Kevin Porter \$2900.⁵ This violation disqualified Porter from Auburn's Sugar Bowl game against Syracuse University.⁶ The *Los Angeles Times* reported that Bruce Allen's sports agency, GBA Sportsworld, violated NCAA rules by signing two University of Nevada at Las Vegas football players to representation contracts before their senior years.⁷ However, college football players are not the only student-athletes targeted by unscrupulous agents.

When college basketball season rolls around, sports agents make numerous phone calls to top players. Phil Taylor, a *Sports Illustrated* contributor, noted, "It's getting increasingly difficult for college players, even non-seniors, to avoid being approached by agents at this time of year."⁸ New Jersey Nets point guard Kenny Anderson changed his phone number while a sophomore at Georgia Tech because of constant phone calls from agents encouraging him to leave school early to enter the NBA draft.⁹ While a junior at the University of California at Los Angeles, Washington Bullets recent draftee Don MacLean explained the phone calls he received: "The same guys keep calling. It gets bothersome. And it's a distraction, something I don't want to concentrate on right now. Nobody's telling me whether to go pro or not. Mostly they want to get an edge, develop a relationship. It's really ridiculous."¹⁰

The above examples, while certainly not exhaustive, demonstrate the need for control and regulation of unscrupulous agents. This article will first examine the effectiveness of the NCAA, professional player associations, and state laws which purport to protect the amateur and student-athlete from unprincipled agents. Second, this article will analyze state athlete agent registration laws, which provide protection to athletes, but may not be constitutional under Commerce Clause or Due Process analysis. Finally, this article proposes a Model Federal Sports Act as a solution to

4. *Id.*

5. *Game-Tampering Conviction Dismissed by Appeals Court*, L.A. TIMES, Dec. 31, 1988, at C7.

6. *Id.*

7. Danny Robbins & Elliott Almond, *Bruce Allen's Partner Provided Access to UNLV Players*, L.A. TIMES, Dec. 23, 1990, at C12. Bruce Allen, the owner of GBA Sportsworld, built his business with UNLV players through influence gained as the son of former Washington Redskins coach George Allen and having a former UNLV coach as a partner. *Id.*

8. Phil Taylor, *Just Say No*, SPORTS ILLUSTRATED, Mar. 11, 1991, at 52.

9. *Id.*

10. *Id.*

protecting athletes.

II. THE NCAA AND PROFESSIONAL PLAYERS ASSOCIATIONS

The NCAA and other collegiate athletic associations offer some protection for the amateur athlete. Similarly, the Major League Baseball Players Association (MLBPA), National Football League Players Association (NFLPA), and National Basketball Players Association (NBPA) are professional player associations that have rules to protect the professional athlete by deterring unscrupulous agent conduct. But those organizations do not provide the amateur or student-athlete with protection from agents. The following discussion about the NCAA, MLBPA, NBPA and NFLPA is not all-inclusive as to the full scope of each organizations' rules and regulations. Rather this survey provides a basic summary of the associations and their application to the regulation of agents.

A. *National Collegiate Athletic Association (NCAA) Regulations*

The NCAA rules indicate that the student-athlete should be protected from agents.¹¹ However, the NCAA has not accomplished this purpose in each instance. Because the NCAA has no authority to discipline an agent, the NCAA must try to control agents by punishing either the student-athlete and, if appropriate, the member school. Under NCAA regulations a student-athlete is forbidden from signing a representation contract with an agent¹² or accepting gifts from an agent.¹³ The NCAA also attempts to control agents by encouraging member schools to set up Career Counseling Panels.¹⁴ The Career Counseling Panels provide guidance to student-

11. See NCAA Constitution § 2.6, *reprinted in 1991-92 NCAA MANUAL* 4.

12. See NCAA Operating Bylaws § 12.3.1.1, *reprinted in 1991-92 NCAA MANUAL* 72. Bylaw § 12.3.1.1 states:

An individual shall be ineligible . . . if he or she enters into a verbal or written agreement with an agent for representation in future professional sports negotiations that are to take place after the individual has completed his or her eligibility in that sport.

13. The bylaws further state:

An individual shall be ineligible . . . if he or she (or his or her relatives or friends) accepts transportation or other benefits from any person who wishes to represent the individual in the marketing of his or her athletics ability. *The receipt of such expenses constitutes compensation based on athletics skill and is an extra benefit not available to the student body in general. Id.*

14. *Id.* § 12.3.4.

athletes regarding future professional athletic careers.¹⁵ The panel may review a professional sports contract, provide guidance in the selection of an agent or use an outside attorney to review a professional sports contract.¹⁶ Hopefully, the panel's advice and assistance to a student-athlete will deter improper agent conduct.¹⁷

B. Major League Baseball Players Association (MLBPA) Regulations Governing Player Agents

The MLBPA Regulations Governing Player Agents (MLBPA Regulations) consist of six sections.¹⁸

1. Scope of MLBPA Regulations

This section allows a registered agent or a player representing himself to perform negotiations with a major league club.¹⁹

2. Requirements for Certification; Grounds for Denying Certification

The initial requirements for agent certification are Filing a "Verified Application and Certification Statement" and the player's written notification to the MLBPA of the desire to retain the applicant as an agent.²⁰

Grounds for denying an agent's certification are: (1) non-compliance with the MLBPA Regulations; (2) providing any misrepresentations or false statements on the application; (3) misappropriating any funds or (4) engaging in conduct that might affect the agents ability to act on behalf of players.²¹

15. *Id.*

16. *Id.*

17. The Career Counseling Panels are just beginning. Thomas O. Keefe, Athlete Agent, Remarks at Cincinnati Bar Ass'n Sports Law Seminar, (Oct. 11, 1991).

18. MAJOR LEAGUE BASEBALL PLAYERS ASS'N, GOVERNING PLAYER AGENTS § 1-6 (1980). The MLBPA is the bargaining unit for its players under the National Labor Relations Act, § 9(a) and the MLBPA collective bargaining agreement. *Id.* § 1-2.

19. *Id.* § 2-3.

20. *Id.* § 3.

21. *Id.* § 4-5. The agent may be granted temporary certification beyond the initial 45 days if it is in the best interests of the player. *Id.* § 4.

3. Standard of Conduct for Player Agents; Prohibited Conduct

Some general conduct requirements of agents are: (1) to fully disclose all pertinent information; (2) to annually attend an MLBPA seminar; (3) to comply with the fee limitations; and (4) to provide the player and the association with an itemized statement that sets forth fees and expenses covering the previous year.²²

Prohibited conduct with regard to amateur or professional athletes that can result in disciplinary actions include the following: (1) the agent may not give anything of value to a player or any other person to induce or encourage the player to utilize the agent's services; and (2) the agent may not provide any false or misleading information to a represented or unrepresented player.²³

4. Agreements Between Players and Agents

In order to serve as a player's agent, the agent and player must enter into a written contract in plain, understandable language that specifies fees and services.²⁴

22. MAJOR LEAGUE BASEBALL PLAYERS ASS'N, GOVERNING PLAYER AGENTS § 6-7 (1980).

23. *Id.* § 3-8. The pertinent parts of section 3-8 regarding the amateur athlete are:

(2) Providing or causing to be provided money or any other thing of value to any Player (including a minor league player or amateur athlete), the purpose of which is to induce or encourage such Player to utilize the Player Agent's services;

(3) Providing or causing to be provided money or any other thing of value to (a) a member of a Player's (including a minor league player's or amateur athlete's) family, or (b) any other person (other than a person in the regular and principal employ of the Player Agent), the purpose of which is to induce or encourage such Player or any other Player (including a minor league player or amateur athlete) to utilize the Player Agent's services [or]

(4) Providing or causing to be provided materially false or misleading information to any Player (including a minor league player or amateur athlete) either in the context of seeking to be selected as a Player Agent for such Player or any other Player (including a minor league player or amateur athlete), or in the course of representing a player as his agent.

Id.

24. *Id.* § 3-10. The fees an agent receives will not make the players net salary less than the league minimum and will not count toward unearned bonuses. Fee restrictions do not apply to professional free agents negotiating new contracts. *Id.* § 3-11.

5. Arbitration

It is the intent of the MLBPA that the impartial arbitration process shall be the exclusive method for resolving any and all disputes between players and agents that arise out of agreements or contracts between them and any disputes concerning denial, revocation, or suspension of an agent's certification.²⁵

6. Effective Date and Amendment

The MLBPA regulations became effective June 17, 1988, and may be amended by the MLBPA's Executive Board.²⁶

C. National Basketball Players Association (NBPA) Regulations Governing Player Agents

The NBPA Regulations Governing Player Agents (hereinafter NBPA Regulations) consists of seven sections.²⁷ The purpose of the NBPA Regulations is to increase recognition among NBA players of the need to insure that agents representing players (including rookies) in individual contract negotiations with NBA clubs provide high quality services at fair and equitable fee levels and establish a program for assisting players and rookies in selecting individual agents.²⁸

1. Scope of the NBPA Regulations

The NBPA Regulations provide that a player may represent himself, but if an agent is to represent a player, the agent must be certified according to the NBPA Regulations.²⁹

25. MAJOR LEAGUE BASEBALL PLAYERS ASS'N, GOVERNING PLAYER AGENTS (1980) § 3-12-18. The rules of procedure of hearing shall be established by the Impartial Arbitrator and, to the extent deemed practicable by him, shall conform to the Voluntary Labor Arbitration Rules of the American Arbitration Association. *Id.* § 3-14.

26. *Id.* § 3-18.

27. NATIONAL BASKETBALL PLAYERS ASS'N, REGULATIONS GOVERNING PLAYER AGENTS § 1-7 (1990). The NBPA is the bargaining agent of its players under the National Labor Relations Act, section 9(a) and the NBPA's collective bargaining agreement. *Id.* § 1.

28. *Id.* at *Foreword*.

29. *Id.* § 2.

2. Requirements for Certification

This section requires an agent to submit an NBPA Application for Certification.³⁰ The grounds for denying certification are essentially the same as those stated in the MLBPA Regulations, section 2.³¹

3. Standards of Conduct for Player Agents in Providing Services Governed by the NBPA Regulations

General requirements for agent conduct are basically the same as set forth in the MLBPA Regulations, section 3.³² Another similar provision is the NBPA's prohibition on an agent's conduct with respect to an amateur or professional athlete.³³

4. Agreements Between Player Agents and Player; Maximum Fees

In order to perform the services as an agent under the NBPA Regulations a person must: (1) be certified; and (2) have signed a written NBPA agreement with the player.³⁴ This section also sets forth the

30. *Id.* § 2-3. If it is in the player's best interest, an agent may be temporarily certified or the committee may extend the certification process an additional thirty (30) days. *Id.*

31. *See supra* note 20 and accompanying text.

32. *See supra* notes 22-23 and accompanying text.

33. NATIONAL BASKETBALL PLAYERS ASS'N, REGULATIONS GOVERNING PLAYER AGENTS § 3-5. The pertinent parts with regard to an agent's conduct toward an amateur athlete are:

- b) Providing or offering a monetary inducement (other than a fee less than the maximum fee contained in the standard fee agreement established by these Regulations) to any player (including a rookie) or college athlete to induce or encourage that person to utilize his services;
- c) Providing or offering money or anything of value to a member of a player's family or another person for the purpose of inducing or encouraging the player to utilize his services or for the purpose of inducing or encouraging that person to recommend that a player (including a rookie) or college athlete utilize the services of the agent; [and]
- d) Providing materially false or misleading information to any player (including a rookie) or college athlete in the context of seeking to be selected as a player agent for that individual or in the course of representing that player as his agent.

Id.

34. *Id.* § 3-6.

maximum fees the player agent may charge or collect.³⁵

5. Arbitration Procedures

Arbitration procedures are essentially the same as the MLBPA Regulations, section 5.³⁶

6. Oversight and Compliance Procedure

This section establishes a Disciplinary Committee responsible for initiating and presenting disciplinary cases against player agents who engage in prohibited conduct.³⁷

7. Effective Date; Amendment

These NBPA Regulations became effective on March 1, 1990, and the may be amended periodically by action of the officers of the NBPA and the player representatives.³⁸

D. National Football League Players Association Code (NFLPA Code) of Conduct for NFLPA Member Contract Advisors

On November 6, 1989, the NFLPA reorganized itself from an exclusive collective bargaining agent for NFL players to a professional association partially dedicated to protecting the individual contracting rights of professional football players.³⁹ Even though the NFLPA adopted the Code of Conduct for Member Contract Advisors (NFLPA Code), membership is voluntary and the NFLPA only recommends that NFL

35. *Id.* § 3-7. The agent receives a \$2000 fee representing a player who signs a contract for the league minimum. If an agent negotiates a contract for over the league minimum, the agent receives a maximum 4% fee.

Id.

36. See *supra* note 25 and accompanying text.

37. NATIONAL BASKETBALL PLAYERS ASS'N, REGULATIONS GOVERNING PLAYER AGENTS § 6, at 10-12.

38. *Id.* § 6-12.

39. NATIONAL FOOTBALL LEAGUE PLAYERS ASS'N, CODE OF CONDUCT FOR NFLPA MEMBER CONTRACT ADVISORS §§ 1-6 (1990) [hereinafter NFLPA CODE].

players use these agents.⁴⁰ The NFLPA Code consists of six sections.⁴¹

1. Scope of Code of Conduct

This section applies to agents negotiating contracts with NFL clubs or providing financial services to an NFL player.⁴² An NFL player includes anyone eligible to play in the NFL, including rookies.⁴³

2. Requirements for Membership

An agent who wishes to become a Member Contract Advisor must file an NFLPA standardized application.⁴⁴

3. Code of Conduct

The Code of Conduct requires that an agent sign an NFLPA Representative Agreement with the player.⁴⁵ This contract allows an agent to represent the player in negotiations with an NFL club and determines the services the agent will provide as well as the agent's fees and the *state law* governing the contract.⁴⁶

The guidelines on conduct toward an athlete resulting in disciplinary action are essentially the same as those of the MLBPA Regulation section 3.⁴⁷

40. *Id.* § 1.

41. *Id.* §§ 1-6.

42. *Id.* § 1A-F.

43. *Id.* § 1.

44. NATIONAL FOOTBALL LEAGUE PLAYERS ASS'N, CODE OF CONDUCT FOR NFLPA MEMBER CONTRACT ADVISORS § 2. The application process may be extended 30 days beyond the initial 45 day period. *Id.*

45. NFLPA CODE, *supra* note 39, § 3A(1).

46. *Id.* at Exhibit C. The choice of state law governing the contract could be important in a state with an athlete agent registration law. The only fee limitation is at what point the agent may collect. *Id.*

47. *Id.* § 3B(3). The pertinent sections regarding agent conduct toward amateur athletes are:

- (a) Provide or offer to provide anything of significant value to a player in order to become the Member Contract Advisor for such player;
- (b) Provide or offer to provide anything of significant value to any other person in return for a personal recommendation of the Member Contract Advisor's selection by a player;
- (c) Provide materially false or misleading information to any person in the context of solicitation for selection as the Member Contract Advisor for any player.

Id.

4. Oversight and Compliance Procedure

This section establishes a three-person Disciplinary Committee which initiates disciplinary procedures against member agents who violate the NFLPA Code.⁴⁸

5. Arbitration Procedure

Arbitration procedures are essentially the same as those in the MLBPA Regulation section 5.⁴⁹

6. Effective Date; Amendments

The NFLPA Code became effective April 1, 1990, and may be amended by the NFLPA Board of Player Directors.⁵⁰

E. Summary

The MLBPA, NFLPA, and NBPA provide professional athletes with economic remedies for injuries, protection against excessive fees and adequate agent representation. The only protection for collegiate or amateur athletes is prohibition on agents' actions during the signing of an athlete to a professional sports contract.⁵¹ The NCAA and like organizations are ineffective in regulating agents because the NCAA rules are only enforceable against amateur athletes and/or member schools. Thus, professional player associations and the NCAA cannot and do not sufficiently protect collegiate or amateur athletes from unscrupulous agents.

III. THE CONSTITUTIONALITY OF STATE ATHLETE AGENT REGISTRATION LAWS

The high profile case of *United States v. Walters*⁵² brought public attention to the unscrupulous conduct of agents toward amateur and

48. NFLPA CODE, *supra* note 39, § 4.

49. *Id.* § 5, *see also supra* note 25.

50. *Id.* § 6.

51. *See supra* notes 23, 33 and 47.

52. 913 F.2d 388 (7th Cir. 1990).

collegiate athletes. Norby Walters and Lloyd Bloom were agents who covertly represented college football players. The agents violated NCAA rules by signing college players to representation contracts and giving them financial assistance.⁵³ As a result, the government brought a seven-count indictment against them,⁵⁴ including mail fraud and conspiracy charges.⁵⁵ The lower court found Walters and Bloom guilty on five of the seven counts.⁵⁶ However, the court of appeals reversed and remanded because the lower court erred by instructing the jury on Walter's advice-of-counsel defense and denying Bloom's motion for a separate trial.⁵⁷ The publicity of the Walters and Bloom case,⁵⁸ as well as other instances of income mismanagement,⁵⁹ excessive fees,⁶⁰ conflicts of interest,⁶¹ and unethical tactics to recruit athletes,⁶² encouraged fifteen states to pass athlete agent registration laws,⁶³ and eight states to pass laws affecting athlete agents.⁶⁴

The fifteen states responded by enacting agent registration laws in part because the NCAA and professional player associations failed in their attempts to govern athlete agents. The main purpose of the laws is to protect the interest of academic institutions, student athletes and athletes in

53. *Id.* at 390.

54. *Id.*

55. *Id.*

56. *Id.*

57. *United States v. Walters*, 997 F.2d 1219 (7th Cir. 1993).

58. *See, e.g., Sports People: College Football; New Trials for Agents*, N.Y. TIMES, Jan. 9, 1991, at B9. *See also Newswire: Jurisprudence*, L.A. TIMES, Jan. 9, 1991, at C6.

59. Kenneth L. Shropshire, *Athlete Agent Regulation: Proposed Legislative Revisions and the Need for Reforms Beyond Legislation*, 8 CARDOZO ARTS & ENT. L.J. 85, 87 & n.12 (1989).

60. *Id.* at n.13.

61. *Id.* at 85, 87, 88 & nn.12-14.

62. *Id.* at 88 & n.15.

63. ALA. CODE §§ 8-26-1 to -41 (Supp. 1990); ARK. CODE ANN. §§ 17-48-101 to -203 (Michie 1989); CAL. LAB. CODE §§ 1500-1547 (West 1989); FLA. STAT. ANN. §§ 468.451-.457 (West 1991); GA. CODE ANN. §§ 43-4A-1 to -19 (Michie 1988 & Supp. 1991); IOWA CODE ANN. §§ 9A.1-.12 (West 1989 & Supp. 1991); LA. REV. STAT. ANN. §§ 4:421-30 (West 1987 & Supp. 1991); MD. BUS. OCC. & PROF. CODE ANN. §§ 632-640 (Supp. 1990); MISS. CODE ANN. §§ 73-41-1 to -23 (1989 & Supp. 1990); N.C. GEN. STAT. §§ 78C-71 to -81 (1990); OKLA. STAT. ANN. tit. 70, §§ 821.61-.71 (West 1989); S.C. CODE ANN. §§ 59-102-10 to -50 (Law Co-op. Supp. 1990); TEX. REV. CIV. STAT. ANN. art. 8871 (West Supp. 1991); VA. CODE ANN. §§ 54.1-518 to -525 (Michie Supp. 1990); WASH. REV. CODE ANN. §§ 18 (West 1989).

64. IND. CODE ANN. §§ 25-9-1-1 to -31 (West 1980 & Supp. 1990) (boxing and wrestling only); KY. REV. STAT. ANN. §§ 229.011-.991 (Michie/Bobbs-Merrill 1982 & Supp. 1990) (boxing and wrestling only); MICH. COMP. LAWS ANN. § 750.411e (West 1991); MINN. STAT. ANN. § 325E.33 (West Supp. 1991); NEV. REV. STAT. §§ 398.005-.095 (1987); OHIO REV. CODE ANN. §§ 4771.01-.99 (Anderson Supp. 1990); 18 PA. CONS. STAT. ANN. § 7107 (Supp. 1991); TENN. CODE ANN. §§ 49-7-2101 to -2109 (Supp. 1990).

general from being misguided and deceived.⁶⁵

Some of the common features of the fifteen athlete agent registration laws are: (1) a registration form, which includes the applicant's name and address, business or occupation and training qualifying the applicant to be an agent; (2) a registration filing fee for initial or renewal registration; (3) a background check; and (4) a penalty for violations.⁶⁶

A. State Athlete Agent Registration Laws and the Commerce Clause of the United States Constitution

Thus far, none of the enacted athlete agent registration laws have been challenged as unconstitutional. However, such a challenge could come under the Commerce Clause. The Commerce Clause of the United States Constitution states that Congress shall have the power "to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."⁶⁷ Congress has the ultimate authority in regulation of interstate commerce, and the regulation of the sports industry is recognized as interstate commerce.⁶⁸ *Hughes v. Oklahoma*⁶⁹ established a test for state or local regulation of interstate commerce. However, the practicing attorney should recognize that there is other applicable case law.⁷⁰

The *Hughes v. Oklahoma* test consists of three prongs. In order to invoke the Commerce Clause, state law must discriminate against out-of-state commerce either on its face or in practical effect. Then the burden falls on the state to demonstrate that the law "serves a legitimate local purpose" and that this purpose could not be served as well by "less restrictive alternatives."⁷¹ If the state meets its burden under the last two prongs, the law is valid under the Commerce Clause. The following are examples of how the *Hughes v. Oklahoma* test can be applied, using the existing Florida and Oklahoma athlete agent registration laws. In both instances, the first element of the *Hughes v. Oklahoma* test is met because

65. See generally Shropshire, *supra* note 59, at 89-93.

66. See *supra* note 63.

67. U.S. CONST. art. I, § 8, cl. 3.

68. *City of Oakland v. Oakland Raiders*, 174 Cal. App. 3d 414, 419 (Ct. App. 1985), *cert. denied*, 478 U.S. 1007 (1986).

69. 441 U.S. 322 (1979).

70. See generally LAURENCE TRIBE, *AMERICAN CONSTITUTIONAL LAW* §§ 6-14 (2d ed. 1988) (stating that "a corporation organized in one state seeking to do business in another state may be required by the latter to qualify under its laws as a 'foreign corporation' before doing business there"). See also *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970).

71. *Hughes v. Oklahoma*, 441 U.S. at 336.

both the Florida and Oklahoma athlete agent registration laws discriminate against out-of-state commerce.

The Oklahoma law may be discriminatory on its face against nonresident athlete agents because the statute explicitly states that attorneys licensed to practice law in the state are exempt from the statute.⁷² Conversely, the nonresident agent must pay a registration fee of \$1000 and provide a \$100,000 surety bond.⁷³

The Florida law is discriminatory in practical effect against nonresident athlete agents who have the financial burden of advancing up to a \$500 registration fee to sign perhaps one athlete.⁷⁴ In contrast, Florida resident agents have the benefit of proximity to in-state athletes while paying the same registration fee. Essentially, the law may have a chilling effect, in that agents from out of state may be less inclined, and less able, to risk \$500 along with the attendant expenses that come with doing business long distance, for a chance at signing only one athlete. Thus, the Florida and Oklahoma athlete agent laws appear to be discriminatory.

The second element of the *Hughes v. Oklahoma* test requires the state to demonstrate that the law serves a legitimate local purpose. The asserted legitimate local purpose is to protect the interests of athletes and academic institutions by regulating the activities of athlete agents involving student-athletes at colleges or universities.⁷⁵ Therefore, it is reasonable to assume that a court would find that the Florida and Oklahoma athlete agent statutes serve a "legitimate local purpose."

To meet the third element of the *Hughes v. Oklahoma* test, the state must show there are no less restrictive alternatives. Because the maximum \$500 registration fee appears reasonable to cover administrative costs,⁷⁶ the Florida statute appears to offer no less restrictive alternative. Conversely, the Oklahoma statute has less restrictive alternatives. The \$1000 registration fee is double that of any other state.⁷⁷ The requirement of the \$100,000 surety bond⁷⁸ is likewise burdensome because other states require a surety bond only if an agent enters into a financial services contract with the athlete, as opposed to a "pure representation contract" for

72. See OKLA. STAT. ANN. tit. 70, § 821.71 (West 1989).

73. *Id.* § 821.62.

74. See FLA. STAT. ANN. § 468.453 (West 1991).

75. See, e.g., FLA. STAT. ANN. § 468.451 (West 1991).

76. See *id.* The statute allows for a maximum fee of \$500. *Id.* § 468.453(1).

77. OKLA. STAT. ANN. tit. 70, § 821.62 (West 1989).

78. *Id.*

negotiations.⁷⁹ Thus, while the Florida statute may pass this prong of the *Hughes v. Oklahoma* test, the Oklahoma statute probably does not.

The creation of athlete agent registration laws in fifteen states should serve as a "red flag" to Congress that states are serious about regulating unscrupulous agents. Alabama fined unregistered (Texas) agent Lance Luchinick \$5000 for representing University of Alabama linebacker Keith McCants in NFL negotiations.⁸⁰ Texas fined Team America, a Nebraska sports marketing firm, under the Texas registration law for illegally contacting then University of Houston quarterback Andre Ware.⁸¹ These incidents demonstrate how state athlete agent registration laws can work to deter problem agents. However, because of possible Commerce Clause challenges previously discussed, there exists the possibility of invalidation for state athlete agent registration laws.

B. State Athlete Agent Registration Laws and the Due Process Clause

The athlete agent registration laws of the fifteen states apply to both registered and unregistered agents.⁸² However, an agent should not fear prosecution for merely visiting an athlete in one of these states. These laws present problems only for nonresident, unregistered agents.

In general, the agent's initial action is to visit athletes and convince them to sign a representation agreement.⁸³ The signed contract allows the agent to represent the athlete in negotiations with a professional club.⁸⁴

If a nonresident, unregistered agent visits an athlete in a state with an athlete agent registration law, the forum state can bring suit against the agent.⁸⁵ However, the Due Process Clause of the Fourteenth Amendment

79. See, e.g., MISS. CODE ANN. § 73-41-9 (1989 & Supp. 1990); N.C. GEN. STAT. § 78C-72 (1992); TEX. REV. CIV. STAT. ANN. art. 8871 (West Supp. 1991).

80. Briefs, CHI. TRIB., May 22, 1990, at C3.

81. *Sports Agency Fined \$10,000 over Ware Contact*, UPI, Feb. 6, 1990, available in LEXIS, Nexis Library, UPI File.

82. See *supra* note 63.

83. R. YASSER, ET AL., SPORTS LAW 237-39 (1990).

84. *Id.*

85. See ALA. CODE § 8-26-41 (Supp. 1990); ARK. CODE ANN. § 17-48-102 (Michie 1989); CAL. LAB. CODE § 1547 (West 1989); FLA. STAT. ANN. § 468.453 (West 1991); GA. CODE ANN. § 43-4A-11 (Michie 1991); IOWA CODE ANN. § 9A.11 (West 1989 & Supp. 1991); LA. REV. STAT. ANN. § 4:426 (West 1987 & Supp. 1991); MD. BUS. REG. CODE ANN. § 4-424, MD. BUS. OCC. & PROF. CODE ANN. § 639 (Supp. 1990); MISS. CODE ANN. § 73-41-15 (1989 & Supp. 1990); N.C. GEN. STAT. § 78C-78 (1990); OKLA. STAT. ANN. tit. 70, § 821.66 (West 1989); S.C. CODE ANN. § 59-102-20 (Law. Co-op. Supp. 1990); TEX. REV. CIV. STAT. ANN. art. 8871 (West Supp. 1991); VA. CODE ANN. § 54.1-523 (Michie Supp. 1990).

may limit a state court's in personam jurisdiction over a nonresident, unregistered agent.⁸⁶

The modern rule governing the scope of a court's in personam jurisdiction over nonresident defendants is the "minimum contacts test".⁸⁷ The forum state may exercise in personam jurisdiction over a nonresident defendant where an alleged injury arises out of or relates to⁸⁸ actions purposefully directed toward forum residents.⁸⁹ However, the state may not exercise in personam jurisdiction if the maintenance of the suit becomes too burdensome on the defendant.⁹⁰

1. Due Process Application to Contracts

*Burger King v. Rudzewicz*⁹¹ applied the "minimum contacts test" to contracts. The Supreme Court in *Burger King* evaluated (1) prior negotiations, (2) future contemplations, (3) terms of the contract and (4) the parties' actual course of business to determine whether the defendant purposefully established minimum contacts with the forum state.⁹² The Court in *Burger King v. Rudzewicz* discussed whether the Burger King Corporation of Florida could bring suit in a Florida district court against a Michigan franchisee.⁹³

Burger King originally filed suit alleging breach of franchise obligations and trademark infringement when the franchisee stopped sending payments but continued to operate.⁹⁴ The franchisee claimed the Florida district court lacked jurisdiction.⁹⁵ The trial court held for Burger King, but the court of appeals reversed, and held that jurisdiction under these

86. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980).

87. *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

88. *See Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 414 (1984).

89. *See Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984).

90. The burden on the defendant to appear in a particular locality will be considered in light of other relevant factors:

1) the forum state's interest in adjudicating the dispute,

2) the plaintiff's interest in obtaining convenient and effective relief,

3) the judicial system's interest in obtaining the most efficient resolution of the controversy and 4) the public interest in furthering substantive social policies.

See World-Wide Volkswagen, 444 U.S. at 292.

91. 471 U.S. 462 (1985).

92. *Id.* at 479.

93. *Id.* at 468.

94. *Id.* at 463, 468.

95. *Burger King v. Rudzewicz*, 471 U.S. 462, 469 (1985).

circumstances would be a burden on the franchisee.⁹⁶

The United States Supreme Court granted certiorari. In overturning the court of appeals, the Court found that the Michigan franchisee purposefully established minimum contacts in Florida.⁹⁷ The Court found that the Michigan franchisee met the four elements of the "minimum contacts test" by (1) negotiating the franchise agreement with Burger King's corporate headquarters in Florida;⁹⁸ (2) signing a twenty-year franchise agreement;⁹⁹ (3) the contract terms stating that "(the contract) shall be deemed made and entered into in the State of Florida and shall be governed and construed under and in accordance with the laws of the State of Florida"¹⁰⁰ and (4) sending payments directly to corporate headquarters in Florida.¹⁰¹ Therefore, the Supreme Court held, the district court was correct in asserting that Florida had in personam jurisdiction over the franchisee.

2. Due Process Possible Application to Nonresident, Unregistered Agents

The Cincinnati Bar Association's Sports Law Committee¹⁰² answered questionnaires to determine a fact pattern that represents the optimal situation of a nonresident agent recruiting an athlete. These answers, which represent the majority of responses, suggest that the actions of nonresident, unregistered agents satisfy the "minimum contacts test."

96. *Id.* at 469-70. See also *Burger King v. MacShara*, 724 F.2d 1505, 1513 (11th Cir. 1984). The court of appeals concluded that "[j]urisdiction under these circumstances would offend the fundamental fairness which is the touchstone of due process." *Id.*

97. *Burger King v. Rudzewicz*, 471 U.S. at 462, 470.

98. *Id.* at 479.

99. *Id.* at 480.

100. *Id.* at 481.

101. *Id.* at 480.

102. The Cincinnati Bar Association's Sports Law Committee consists of a variety of sports agents. The majority of the agents work with football and baseball professionals.

A. Background

The questionnaire proposed this scenario: An athlete is coming out of high school or college to turn professional. How will you, as an agent, recruit the athlete?

B. Questions and Majority Responses

i. Prior Negotiations

Question: Where do and what type of negotiations take place when trying to sign an amateur athlete?

Answer: Agents normally conduct negotiations in the state where the athlete attends school. The negotiations take place over the phone and in person. The discussion ranges from the athlete's education to the possible monetary amount the athlete can expect.

ii. Future Contemplations

Question: Upon initial signing, do agents contemplate a long standing relationship with the athlete?

Answer: Agents anticipate that a business relationship will be long standing. The agent knows that a recommendation from well-represented professional athletes will promote business faster than any other means.

iii. Terms of the Contract

Question: What type of contract does an athlete sign with an agent?

Answer: The initial contract is a representation agreement.

Question: In any initial contract, does a clause appear that states the agent will come under a certain state's jurisdiction?

Answer: These contract terms normally explain which state's jurisdiction applies. The state is usually where the athlete played his sport.

iv. Actual Course of Business

Question: If an athlete signs, will the agent conduct business in the agent's or athlete's principal state?

Answer: The agent will normally conduct business in the state where

the athlete plays his sport.

C. Analysis

The answers to the questionnaire seem to indicate that the agents would meet the "minimum contacts test." In the optimal situation, the nonresident, unregistered agent who negotiates and ultimately signs an athlete in one of the fifteen states with athlete agent laws will be subject to personal jurisdiction in that state. It is debatable whether the "minimum contacts test" will be satisfied where a nonresident, unregistered agent conducts negotiations in one of the fifteen states but signs the contract in another state. This answer can only be determined on a case-by-case basis. Naturally, because of the uncertain nature of the law, a nonresident, unregistered agent should remain informed of each state's laws.

3. Visiting an Amateur Athlete

The nonresident, unregistered agent should be able to visit an amateur athlete in one of the fifteen states without having to pay registration fees¹⁰³ or post surety bonds.¹⁰⁴ The Seventh Circuit in *Kaye-Martin v. Brooks*¹⁰⁵ established the principle that a nonresident who visits a state to conduct contract negotiations does not come under that state's in personam jurisdiction because this action does not satisfy the "minimum contacts test."¹⁰⁶ Therefore, a nonresident athlete agent should be able to visit an amateur athlete in his or her home state simply to discuss services and benefits and not be subject to lawsuits. However, an agent who signs a representation agreement or agrees to any other written or oral contract in the amateur athlete's home state may be subject to in personam jurisdiction.¹⁰⁷

103. See *supra* note 64.

104. ALA. CODE § 8-26-14 (Supp. 1990); ARK. CODE ANN. § 17-48-202 (Michie Supp. 1989); CAL. LAB. CODE § 1519 (West 1989); GA. CODE ANN. § 43-4A-13 (Michie 1988 & Supp. 1991); IOWA CODE ANN. § 9A.6 (West 1989 & Supp. 1991); MISS. CODE ANN. § 73-41-9 (1989 & Supp. 1990); N.C. GEN. STAT. § 78C-72 (1990); OKLA. STAT. ANN. tit. 70, § 821.62 (1989); TEX. REV. CIV. STAT. ANN. art. 8871 (West Supp. 1991); VA. CODE ANN. § 54.1-519 (Michie Supp. 1990).

105. 267 F.2d. 394 (7th Cir. 1959), *cert. denied*, 361 U.S. 832 (1959).

106. *Id.* at 397-98.

107. See *id.*

In *World-Wide Volkswagen Corp. v. Woodson*,¹⁰⁸ the Supreme Court implied that a person who conducts business in a state may establish minimum contacts in the forum state and be subject to in personam jurisdiction if an injury occurs in the forum state.¹⁰⁹ If a nonresident athlete agent comes to the athlete's home state and acts improperly, he or she is conducting business and has potentially caused injury in the forum state. Therefore, the agent could establish minimum contacts under the *World-Wide Volkswagen* standard.

Arguably, the *World-Wide Volkswagen* decision should not apply to nonresident agents merely involved in contract negotiations. The Court implied that a nonresident who sells or advertises products in a state could satisfy the "minimum contacts test" for a products liability suit, but not for a contracts suit.¹¹⁰ Thus, the *World-Wide Volkswagen* case should not extend the doctrine of products liability to nonresident agents when their actions are limited to negotiations. The nonresident, unregistered agent who negotiates and signs an athlete to a contract in a state with an athlete agent registration law will be subject to in personam jurisdiction. The agent should also be subject to in personam jurisdiction if he or she negotiates with an athlete and agrees to an oral contract. However, such an agent is not subject to in personam jurisdiction if he or she only visits the athlete to explain services.

C. The Need for Federal Legislation

The possibility of the Due Process or Commerce Clause limiting the enforcement of athlete agent registration laws should serve as notice to Congress that current state laws are inadequate. The following is an example of the difficulty in determining which state has jurisdiction:

If an agent lives in Connecticut, has an office in New York, and is seeking to represent an athlete who just finished college in Oklahoma, was chosen by the Dallas Cowboys in the NFL draft, and whose mother lives in Los Angeles, and the mother, son, and prospective agent meet in California to discuss representation, which state can properly assert jurisdiction?¹¹¹

Unless there is federal legislation, more states might be prompted to

108. 444 U.S. 286 (1980).

109. *Id.* at 295-96.

110. *Id.* at 297.

111. David L. Dunn, Note, *Regulation of Sports Agents: Since at First It Hasn't Succeeded, Try Federal Legislation*, 39 HASTINGS L.J. 1031, 1065 (1988).

pass athlete agent registration laws. These state-by-state regulations will impose an even greater financial burden on agents and will in all probability violate the Commerce Clause.¹¹² If Congress waits for an individual to challenge these laws, it may be too late for certain athletes.

An [amateur] athlete may therefore miss the opportunity to speak to the agent best suited to represent him because the agent may choose not to "spend a lot of money and time just for a shot." Instead of protecting the [amateur] athlete, a state regulation may place the athlete at a disadvantage to those athletes in states without regulations. Preemptive federal regulation would replace multiple application and fee requirements Competent representatives would not be priced out of the market and athletes would have a broader field of agents from which to choose.¹¹³

Congress would best serve the interest of state legislators by framing legislation similar to the Uniform Commercial Code or Model Penal Code which provide uniformity and consistency. Such legislation would inform and regulate agents and protect athletes.

IV. PROPOSAL

Individual state athlete agent registration laws are ripe for attack under the Commerce Clause and the Due Process Clause. A well drafted Model Federal Sports Act should eliminate these concerns.¹¹⁴

The proposed Model Federal Sports Act ("Act"), as federal legislation, would be not be subject to the Commerce Clause. As well, a blanket federal act would unify the states on the issue of athlete agent registration laws, making consistent and simpler law. As well, the Act will *not* allow an unregistered agent to visit an athlete, explain benefits and services, and orally or in writing agree to represent the athlete.¹¹⁵ But the Act should survive a Due Process Clause challenge because it allows an unregistered agent to visit an athlete.¹¹⁶

The Act uses arbitration to settle agreement or contract disputes between athletes and agents and to settle disputes concerning denial,

112. See *supra* notes 71-79 and accompanying text.

113. Dunn, *supra* note 111, at 1066 (footnotes omitted).

114. See attached appendix.

115. *Id.* § 100-6(g).

116. *Id.* § 100-2.

revocation or suspension of an agent's certification.¹¹⁷ Arbitration should provide a quick and final resolution to most disputes. The arbitration procedure provides agents and amateur athletes with constitutional due process. "An agreement to arbitrate is basically a contract between the parties in which they promise to resolve disputes by non-judicial means."¹¹⁸ Arbitration is a time-saving device that also saves money by avoiding court proceedings and attorneys fees.¹¹⁹ Additionally, arbitration proceedings are kept out of the public eye and give disputants a choice in the selection of the arbitrator.¹²⁰

The issues the parties may arbitrate depend on their agreement. Under the proposed Act, an agent will submit to arbitration issues concerning denial, revocation, or suspension of an agent's certification.¹²¹ The Act allows the amateur athlete and agent to define in their agreement or contract which other disputes they wish submitted to arbitration.

Congress would greatly benefit amateur athletes, agents, the NCAA and other collegiate sports association member schools by passing a Federal Sports Act. The adoption and implementation of the Act will allow the states to retain jurisdictional control over unscrupulous agents and allow the individual agents a fair playing field in every state.

117. *Id.* §§ 100-3(1)(e) & 100-4(2-3).

118. JOHN C. WEISTART & CYM H. LOWELL, *THE LAW OF SPORTS* 408 (1979).

119. *Id.*

120. *Id.*

121. *See* attached Appendix § 100-4.

APPENDIX

[PROPOSED]

MODEL FEDERAL SPORTS ACT¹²²

§ 100-1 Definitions

(1) As used in this chapter:

(a) "Person" means an individual, company, corporation, association, partnership or other legal entity.

(b) "Athlete agent" means a person who, directly or indirectly, recruits or solicits an athlete to enter into an agent contract or professional sport services contract or who for a fee procures, offers, promises or attempts to obtain employment for an athlete with a professional sports team.

(c) "Agent contract" means any contract or agreement under which an athlete authorizes an athlete agent to negotiate or solicit on behalf of the athlete with one or more professional sports teams for the employment of the athlete by one or more professional sports teams.

(d) "Financial services contract" means any contract or agreement under which an athlete authorizes an athlete agent to provide financial services for the athlete, including the making and execution of investment and other financial decisions by the agent on behalf of the athlete.

(e) "Student-athlete" means an athlete enrolled at an institution of higher education who is eligible, or who is receiving partial or full athletic scholarship assistance and who may in the future be eligible, to participate in intercollegiate sports contests as a member of a sports team at the institution which is a member of the NCAA, the National Association of Intercollegiate Athletics (NAIA) or any other collegiate athletic organization. The term "Student-athlete" shall also include athletes who are under twenty-one (21) years of age and who may in the future be eligible to participate in intercollegiate sports contests as a member of a sports team

122. Unless otherwise footnoted, this proposal is largely based upon, and in parts specifically derived from MISS. CODE ANN. §§ 73-41-1 to 73-41-23 (1989 & Supp. 1990).

at an institution which is a member of the NCAA, NAIA or other collegiate athletic association.

(f) "Registered athlete agent" means an athlete agent registered with the Commissioner of Sports under the provisions of this Act.

(g) "Commissioner" means the Commissioner of Sports.

(2) For purposes of this chapter, the execution by an athlete of a personal service contract with the owner or prospective owner of a professional sports team for the purpose of future athletic services is equivalent to employment with a professional sports team.

§ 100-2 Effect of non-registration

(1) An unregistered athlete agent may only contact a student-athlete to explain his/her services in accordance with the conduct as set forth in this chapter.¹²³ An unregistered athlete agent whose conduct violates this Act is subject to prosecution according to the provisions of this chapter.¹²⁴

(2) A registered athlete agent may contact, directly or indirectly, a student-athlete in accordance with the conduct as set forth in this chapter.¹²⁵

§ 100-3 Application for registration

(1) A written application for registration or renewal must be made to the Commissioner on a form prescribed by the Commissioner and shall state:

(a) The name of the applicant and the address of the applicant's principal place of business.

(b) The business or occupation engaged in by the applicant for each of the five (5) years immediately preceding the date of application.

(c) The names and addresses of three (3) character references.

123. This part of the Act allows an unregistered agent to visit an amateur athlete.

124. *Id.*

125. This part of the Act allows a registered agent to contact an amateur athlete.

(d) The names and addresses of all persons, except bona fide employees on stated salaries, who are financially interested as partners, associates or profit sharers in the operation of the business of the athlete agent.

(e) That any disputes arising out of agreements or contracts between a student-athlete and a registered athlete agent and any disputes concerning denial, revocation, or suspension of a registered athlete agent's certification shall be resolved in accordance with the arbitration procedures as set forth in this chapter.

(2) A registration is valid from July 1 of one (1) year through June 30 of the following year. An initial registration is valid until the first June 30th following the date of registration. Registration may be renewed by filing of a renewal application.

(3) An annual registration fee shall not exceed \$200 and shall be paid by the athlete agent to the Commissioner to be deposited in a trust fund to be established for the enforcement of the Act.

§ 100-4 Refusal to issue or renew registration; hearing

(1) The Commissioner may, pursuant to an impartial arbitration hearing conducted as provided in subsection (3) of this section, refuse to issue or renew a registration upon proof that the applicant or his representative:

(a) Has made false or misleading statements of a material nature in his application for registration or renewal;

(b) Has ever been convicted of fraud, embezzlement, a felonious theft or any other crime involving a misappropriation of funds, which would render him unfit to serve in a fiduciary capacity; or

(c) Has engaged in conduct which violates or causes an athlete to violate any rule or regulation promulgated by the National Collegiate Athletic Association or the National Association of Intercollegiate Athletics governing athletes and their relationship with athlete agents.

(2) The Commissioner may, pursuant to an impartial arbitration hearing as provided in subsection (3) of this section, suspend or revoke a registration for a violation of this chapter or any rule adopted pursuant to this chapter.

(3) Steps for an arbitration process:

(a) "A party files a demand for arbitration with the Commissioner, and a case administrator is assigned to follow the case through to its conclusion."¹²⁶

(b) "Other parties named in the demand are notified and replies requested."¹²⁷

(c) "The case administrator reviews independent arbitrator qualifications and selects an individual or individuals suitable for the particular case."¹²⁸

(d) "The list of names is sent to the parties, each of whom numbers in order of preference those persons it finds acceptable."¹²⁹

(e) "An arbitrator is selected by the administrator according to the mutual desires of the parties. If the parties are unable to agree, the Commissioner may appoint an arbitrator."¹³⁰

(f) "The administrator arranges a hearing date and location convenient to the parties and to the arbitrator."¹³¹

(g) "At the hearing, testimony and documents are submitted to the arbitrator, and witnesses are questioned and cross examined."¹³²

(h) After the close of the hearing, the arbitrator evaluates the evidence and issues a written binding award.¹³³ "[C]opies shall be sent to the parties by the case administrator."¹³⁴

(i) Where appropriate, damage awards may include nominal, compensatory, and punitive damages.

126. AMERICAN ARBITRATION ASS'N, *Resolving Your Disputes*, at 9.

127. *Id.*

128. *Id.*

129. *Id.*

130. AMERICAN ARBITRATION ASS'N, *Resolving Your Disputes*, at 9.

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

§ 100-5 Surety bond

(1) Before the issuance or renewal of a certificate of registration, an athlete agent that enters into a financial services contract with an athlete must deposit with the Commissioner a surety bond in the sum of one hundred thousand dollars (\$100,000), payable to the state and conditioned that the person applying for the registration will comply with this chapter, will pay all amounts due any individual or group of individuals when the person or the person's representative or agent has received those amounts, and will pay all damages caused to any athlete by reason of the intentional misrepresentation, fraud, deceit, or any unlawful or negligent act or omission by the registered athlete agent or the agent's representative or employee while acting within the scope of the financial services contract. The athlete agent shall maintain the bond until two (2) years after the date on which the athlete agent ceases to engage in the provision of financial services for an athlete. This subsection does not limit the recovery of damages to the amount of the surety bond.

(2) If an athlete agent has entered into a financial services contract with an athlete and fails to file a new bond with the Commissioner not later than the thirtieth day after date of receipt of a notice of cancellation issued by the surety of the bond, the Commissioner shall suspend the certificate of registration issued to that athlete agent under the bond until the athlete agent files a new surety bond with the Commissioner.

(3) An athlete agent that enters into an agent contract only is not required to meet the bond requirements of this section.

§ 100-6 Restricted activities

An athlete agent shall not:

(a) Sell, transfer or give away any interest in or the right to participate in the profits of an athlete agent without prior written disclosure to the Commissioner;

(b) Publish or cause to be published any false, fraudulent or misleading information, representation, notice or advertisement;

(c) Advertise by means of cards, circulars or signs, or in newspapers and other publications, or use letterheads, receipts or blanks, unless the

advertisement, letterhead, receipt or blank is printed and contains the registered name and address of the athlete agent;

(d) Intentionally give any false information or intentionally make any false promises or representations to any student-athlete;

(e) Divide fees with or receive compensation from a professional sports league or franchise, or its representative or employee in regard to a particular student-athlete;

(f) Enter into any agreement, written or oral, by which the athlete agent offers anything of value, including the rendition of free or reduced-price legal services, to any employee of an institution of higher learning located in this state in return for the referral of any clients by that employee;

(g) Except as provided in Section 100-7, enter into any agreement, written or oral, by which the athlete agent will represent the athlete, or give anything of value to a student-athlete, until after completion of the student-athlete's last intercollegiate sports contest, including post season games. For the purpose of this paragraph (g), an athlete agent may not enter into an agreement before the student-athlete's last intercollegiate contest that purports to take effect at a time after that contest is completed.

§ 100-7 Interviews at institutions of higher learning

If an institution of higher education elects to sponsor athlete agent interviews on its campus during the student-athlete's final year of collegiate eligibility, a registered [or unregistered] athlete agent may interview with the student-athlete to discuss his representation of the student-athlete in the marketing of the student-athlete's athletic ability or reputation. The registered or unregistered athlete agent shall strictly adhere to the specific rules of each separate electing institution with regard to the time, place and duration of the registered athlete agent interviews. The interviews must be conducted in that final year during a period not to exceed thirty (30) consecutive days.

§ 100-8 Violations; penalties

(1) (a) A registered athlete agent commits an offense if he or she knowingly or intentionally violates the provisions of Section 100-6.

(b) An athlete agent commits an offense if he or she knowingly or intentionally violates the provisions of Section 100-2 or the provisions of Section 100-6.

(c) A person commits an offense if he or she knowingly or intentionally either files a false sworn complaint or gives false sworn testimony concerning activities covered by this chapter.

(d) Conviction of an offense under this subsection (1) shall be punishable by a fine of not more than ten thousand dollars (\$10,000) or by imprisonment of not more than two years, or both.

(2) An athlete agent who is convicted under the provisions of subsection (1) of this section, shall, upon order of a court of competent jurisdiction:

(a) Forfeit any right of repayment of anything of value either received by an athlete as an inducement to enter into any agent contract or received by a student-athlete before completion of the student-athlete's last intercollegiate sports contest.

(b) Pay a refund of any consideration paid to the athlete agent on an athlete's behalf.

(c) Pay reasonable attorney's fees and court costs.

(3) Any agent contract negotiated by an athlete agent who has failed to comply with this chapter is void and unenforceable.

§ 100-9 Rules to be adopted

The Commissioner may adopt rules necessary to implement the provisions of this chapter.

§ 100-10 Compliance date for registration

An athlete agent is not required to be registered and is not required to comply with this chapter until its adoption.

§ 100-11 Liability for loss of collegiate eligibility

If a student-athlete loses his or her eligibility to participate in sports sanctioned by the National Collegiate Athletic Association, the National Association of Intercollegiate Athletics or any other collegiate sports organization, as a result of such student-athlete's contact with an athlete agent, the institution of higher education that such student-athlete attended shall have a cause of action against such student-athlete and the athlete agent of such athlete for reasonable reimbursement for the costs the institution incurred in providing a scholarship to such athlete, loss of revenue and other damages suffered by such institution as a direct result of such student-athlete's loss of eligibility.

