

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 292

FINAL READING

Introduced by Lathrop, 12.

Read first time January 15, 2009

Committee: Judiciary

A BILL

1 FOR AN ACT relating to sports agents; to amend section 84-907.03,
2 Reissue Revised Statutes of Nebraska; to adopt the
3 Nebraska Uniform Athlete Agents Act; to provide
4 penalties; to harmonize provisions; to provide an
5 operative date; to provide severability; and to repeal
6 the original section.

7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 19 of this act shall be known
2 and may be cited as the Nebraska Uniform Athlete Agents Act.

3 Sec. 2. In the Nebraska Uniform Athlete Agents Act:

4 (1) Agency contract means an agreement in which a
5 student-athlete authorizes a person to negotiate or solicit
6 on behalf of the student-athlete a professional-sports-services
7 contract or an endorsement contract;

8 (2) Athlete agent means an individual who enters into an
9 agency contract with a student-athlete or, directly or indirectly,
10 recruits or solicits a student-athlete to enter into an agency
11 contract. The term includes an individual who represents to the
12 public that the individual is an athlete agent. The term does
13 not include a spouse, parent, sibling, grandparent, or guardian of
14 the student-athlete or an individual acting solely on behalf of a
15 professional sports team or professional sports organization;

16 (3) Athletic director means an individual responsible
17 for administering the overall athletic program of an educational
18 institution or, if an educational institution has separately
19 administered athletic programs for male students and female
20 students, the athletic program for males or the athletic program
21 for females, as appropriate;

22 (4) Contact means a communication, direct or indirect,
23 between an athlete agent and a student-athlete, to recruit or
24 solicit the student-athlete to enter into an agency contract;

25 (5) Endorsement contract means an agreement under which

1 a student-athlete is employed or receives consideration to use on
2 behalf of the other party any value that the student-athlete may
3 have because of publicity, reputation, following, or fame obtained
4 because of athletic ability or performance;

5 (6) Intercollegiate sport means a sport played at
6 the collegiate level for which eligibility requirements for
7 participation by a student-athlete are established by a national
8 association for the promotion or regulation of collegiate
9 athletics;

10 (7) Person means an individual, corporation, business
11 trust, estate, trust, partnership, limited liability company,
12 association, joint venture, or government; governmental
13 subdivision, agency, or instrumentality; public corporation;
14 or any other legal or commercial entity;

15 (8) Professional-sports-services contract means an
16 agreement under which an individual is employed, or agrees to
17 render services, as a player on a professional sports team, with a
18 professional sports organization, or as a professional athlete;

19 (9) Record means information that is inscribed on a
20 tangible medium or that is stored in an electronic or other medium
21 and is retrievable in perceivable form;

22 (10) Registration means registration as an athlete agent
23 pursuant to the act;

24 (11) State means a state of the United States, the
25 District of Columbia, Puerto Rico, the United States Virgin

1 Islands, or any territory or insular possession subject to the
2 jurisdiction of the United States; and

3 (12) Student-athlete means an individual who engages
4 in, is eligible to engage in, or may be eligible in the
5 future to engage in, any intercollegiate sport. If an individual
6 is permanently ineligible to participate in a particular
7 intercollegiate sport, the individual is not a student-athlete for
8 purposes of that sport.

9 Sec. 3. (1) By acting as an athlete agent in this state,
10 a nonresident individual appoints the Secretary of State as the
11 individual's agent for service of process in any civil action in
12 this state related to the individual's acting as an athlete agent
13 in this state.

14 (2) The Secretary of State may issue subpoenas for any
15 material that is relevant to the administration of the Nebraska
16 Uniform Athlete Agents Act.

17 Sec. 4. (1) Except as otherwise provided in subsection
18 (2) of this section, an individual may not act as an athlete agent
19 in this state without holding a certificate of registration under
20 section 6 or 8 of this act.

21 (2) Before being issued a certificate of registration,
22 an individual may act as an athlete agent in this state for all
23 purposes except signing an agency contract if:

24 (a) A student-athlete or another person acting on behalf
25 of the student-athlete initiates communication with the individual;

1 and

2 (b) Within seven days after an initial act as an athlete
3 agent, the individual submits an application for registration as an
4 athlete agent in this state.

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

8 Sec. 5. (1) An applicant for registration shall submit
9 an application for registration to the Secretary of State in a
10 form prescribed by the Secretary of State. An application filed
11 under this section is a public record. The application must be
12 in the name of an individual and, except as otherwise provided in
13 subsection (2) of this section, signed or otherwise authenticated
14 by the applicant under penalty of perjury and state or contain:

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

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

19 (c) Any business or occupation engaged in by the
20 applicant for the five years next preceding the date of submission
21 of the application;

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

23 (i) Formal training as an athlete agent;

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

25 (iii) Educational background relating to the applicant's

1 activities as an athlete agent;

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

4 (f) The name, sport, and last-known team for each
5 individual for whom the applicant acted as an athlete agent
6 during the five years next preceding the date of submission of the
7 application;

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

9 (i) With respect to the athlete agent's business if it
10 is not a corporation, the partners, members, officers, managers,
11 associates, or profit-sharers of the business; and

12 (ii) With respect to a corporation employing the athlete
13 agent, the officers, directors, and any shareholder of the
14 corporation having an interest of five percent or greater;

15 (h) Whether the applicant or any person named pursuant to
16 subdivision (g) of this subsection has been convicted of a crime
17 that, if committed in this state, would be a crime involving moral
18 turpitude or a felony, and identify the crime;

19 (i) Whether there has been any administrative or judicial
20 determination that the applicant or any person named pursuant to
21 subdivision (g) of this subsection has made a false, misleading,
22 deceptive, or fraudulent representation;

23 (j) Any instance in which the conduct of the applicant
24 or any person named pursuant to subdivision (g) of this subsection
25 resulted in the imposition of a sanction, suspension, or

1 declaration of ineligibility to participate in an interscholastic
2 or intercollegiate athletic event on a student-athlete or an
3 educational institution;

4 (k) Any sanction, suspension, or disciplinary action
5 taken against the applicant or any person named pursuant to
6 subdivision (g) of this subsection arising out of occupational or
7 professional conduct; and

8 (l) Whether there has been any denial of an application
9 for, suspension or revocation of, or refusal to renew, the
10 registration or licensure of the applicant or any person named
11 pursuant to subdivision (g) of this subsection as an athlete agent
12 in any state.

13 (2) An individual who has submitted an application for,
14 and holds a certificate of, registration or licensure as an athlete
15 agent in another state may submit a copy of the application
16 and certificate in lieu of submitting an application in the
17 form prescribed pursuant to subsection (1) of this section. The
18 Secretary of State shall accept the application and the certificate
19 from the other state as an application for registration in this
20 state if the application to the other state:

21 (a) Was submitted in the other state within six months
22 next preceding the submission of the application in this state
23 and the applicant certifies that the information contained in the
24 application is current;

25 (b) Contains information substantially similar to or more

1 comprehensive than that required in an application submitted in
2 this state; and

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

4 Sec. 6. (1) Except as otherwise provided in subsection
5 (2) of this section, the Secretary of State shall issue a
6 certificate of registration to an individual who complies with
7 subsection (1) of section 5 of this act or whose application has
8 been accepted under subsection (2) of section 5 of this act.

9 (2) The Secretary of State may refuse to issue a
10 certificate of registration if the Secretary of State determines
11 that the applicant has engaged in conduct that has a significant
12 adverse effect on the applicant's fitness to act as an athlete
13 agent. In making the determination, the Secretary of State may
14 consider whether the applicant has:

15 (a) Been convicted of a crime that, if committed in this
16 state, would be a crime involving moral turpitude or a felony;

17 (b) Made a materially false, misleading, deceptive, or
18 fraudulent representation in the application or as an athlete
19 agent;

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

22 (d) Engaged in conduct prohibited by section 14 of this
23 act;

24 (e) Had a registration or licensure as an athlete
25 agent suspended, revoked, or denied or been refused renewal of

1 registration or licensure as an athlete agent in any state;

2 (f) Engaged in conduct the consequence of which was
3 that a sanction, suspension, or declaration of ineligibility to
4 participate in an interscholastic or intercollegiate athletic event
5 was imposed on a student-athlete or an educational institution; or

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

8 (3) In making a determination under subsection (2) of
9 this section, the Secretary of State shall consider:

10 (a) How recently the conduct occurred;

11 (b) The nature of the conduct and the context in which it
12 occurred; and

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

14 (4) An athlete agent may apply to renew a registration
15 by submitting an application for renewal in a form prescribed by
16 the Secretary of State. An application filed under this section
17 is a public record. The application for renewal must be signed by
18 the applicant under penalty of perjury and must contain current
19 information on all matters required in an original registration.

20 (5) An individual who has submitted an application for
21 renewal of registration or licensure in another state, in lieu
22 of submitting an application for renewal in the form prescribed
23 pursuant to subsection (4) of this section, may file a copy of the
24 application for renewal and a valid certificate of registration or
25 licensure from the other state. The Secretary of State shall accept

1 the application for renewal from the other state as an application
2 for renewal in this state if the application to the other state:

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

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

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

11 (6) A certificate of registration or a renewal of a
12 registration is valid for two years.

13 Sec. 7. (1) The Secretary of State may suspend, revoke,
14 or refuse to renew a registration for conduct that would have
15 justified denial of registration under subsection (2) of section 6
16 of this act.

17 (2) The Secretary of State may deny, suspend, revoke,
18 or refuse to renew a certificate of registration or licensure
19 only after proper notice and an opportunity for a hearing.
20 The Administrative Procedure Act applies to the Nebraska Uniform
21 Athlete Agents Act.

22 Sec. 8. The Secretary of State may issue a temporary
23 certificate of registration while an application for registration
24 or renewal of registration is pending.

25 Sec. 9. (1) An application for registration or renewal

1 of registration must be accompanied by either an application for
2 registration fee or a renewal of registration fee, as applicable.

3 (2) The Secretary of State may, by rule and regulation,
4 establish fees for applications for registration and renewals
5 of registration at rates sufficient to cover the costs of
6 administering the Nebraska Uniform Athlete Agents Act, in the
7 event any such fees are required. Such fees shall be collected
8 by the Secretary of State and remitted to the State Treasurer for
9 credit to the Secretary of State Administration Cash Fund.

10 Sec. 10. (1) An agency contract must be in a record,
11 signed or otherwise authenticated by the parties.

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

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

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

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

24 (d) A description of the services to be provided to the
25 student-athlete;

1 (e) The duration of the contract; and

2 (f) The date of execution.

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

6 WARNING TO STUDENT-ATHLETE

7 IF YOU SIGN THIS CONTRACT:

8 (1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A
9 STUDENT-ATHLETE IN YOUR SPORT;

10 (2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS
11 AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT
12 MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND

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

16 (4) An agency contract that does not conform to this
17 section is voidable by the student-athlete. If a student-athlete
18 voids an agency contract, the student-athlete is not required
19 to pay any consideration under the contract or to return any
20 consideration received from the athlete agent to induce the
21 student-athlete to enter into the contract.

22 (5) The athlete agent shall give a record of the signed
23 or otherwise authenticated agency contract to the student-athlete
24 at the time of execution.

25 Sec. 11. (1) Within seventy-two hours after entering into

1 an agency contract or before the next scheduled athletic event in
2 which the student-athlete may participate, whichever occurs first,
3 the athlete agent shall give notice in a record of the existence
4 of the contract to the athletic director of the educational
5 institution at which the student-athlete is enrolled or the athlete
6 agent has reasonable grounds to believe the student-athlete intends
7 to enroll.

8 (2) Within seventy-two hours after entering into an
9 agency contract or before the next athletic event in which
10 the student-athlete may participate, whichever occurs first,
11 the student-athlete shall inform the athletic director of the
12 educational institution at which the student-athlete is enrolled
13 that he or she has entered into an agency contract.

14 Sec. 12. (1) A student-athlete may cancel an agency
15 contract by giving notice of the cancellation to the athlete agent
16 in a record within fourteen days after the contract is signed.

17 (2) A student-athlete may not waive the right to cancel
18 an agency contract.

19 (3) If a student-athlete cancels an agency contract, the
20 student-athlete is not required to pay any consideration under the
21 contract or to return any consideration received from the athlete
22 agent to induce the student-athlete to enter into the contract.

23 Sec. 13. (1) An athlete agent shall retain the following
24 records for a period of five years:

25 (a) The name and address of each individual represented

1 by the athlete agent;

2 (b) Any agency contract entered into by the athlete
3 agent; and

4 (c) Any direct costs incurred by the athlete agent in the
5 recruitment or solicitation of a student-athlete to enter into an
6 agency contract.

7 (2) Records required by subsection (1) of this section to
8 be retained are open to inspection by the Secretary of State during
9 normal business hours.

10 Sec. 14. (1) An athlete agent, with the intent to induce
11 a student-athlete to enter into an agency contract, may not:

12 (a) Give any materially false or misleading information
13 or make a materially false promise or representation;

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

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

18 (2) An athlete agent may not intentionally:

19 (a) Initiate contact with a student-athlete unless
20 registered under the Nebraska Uniform Athlete Agents Act;

21 (b) Refuse or fail to retain or permit inspection of the
22 records required to be retained by section 13 of this act;

23 (c) Fail to register when required by section 4 of this
24 act;

25 (d) Provide materially false or misleading information in

1 an application for registration or renewal of registration;

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

3 (f) Fail to notify a student-athlete before the
4 student-athlete signs or otherwise authenticates an agency contract
5 for a particular sport that the signing or authentication may make
6 the student-athlete ineligible to participate as a student-athlete
7 in that sport.

8 Sec. 15. An athlete agent who violates section 14 of this
9 act is guilty of a Class I misdemeanor.

10 Sec. 16. (1) An educational institution has a right of
11 action against an athlete agent or a former student-athlete for
12 damages caused by a violation of the Nebraska Uniform Athlete
13 Agents Act. In an action under this section, the court may award to
14 the prevailing party costs and reasonable attorney's fees.

15 (2) Damages of an educational institution under
16 subsection (1) of this section include losses and expenses incurred
17 because, as a result of the conduct of an athlete agent or a
18 former student-athlete, the educational institution was injured by
19 a violation of the act or was penalized, disqualified, or suspended
20 from participation in athletics by a national association for the
21 promotion and regulation of athletics, by an athletic conference,
22 or by reasonable self-imposed disciplinary action taken to mitigate
23 sanctions likely to be imposed by such an organization.

24 (3) A right of action under this section does not accrue
25 until the educational institution discovers or by the exercise of

1 reasonable diligence would have discovered the violation by the
2 athlete agent or former student-athlete.

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

5 (5) The act does not restrict rights, remedies, or
6 defenses of any person under law or equity.

7 Sec. 17. The Secretary of State may assess a civil
8 penalty against an athlete agent not to exceed twenty-five thousand
9 dollars for a violation of the Nebraska Uniform Athlete Agents Act.

10 Sec. 18. In applying and construing this uniform act,
11 consideration must be given to the need to promote uniformity of
12 the law with respect to its subject matter among states that enact
13 it.

14 Sec. 19. The provisions of the Nebraska Uniform Athlete
15 Agents Act governing the legal effect, validity, or enforceability
16 of electronic records or signatures, and of contracts formed or
17 performed with the use of such records or signatures, conform to
18 the requirements of section 102 of the Electronic Signatures in
19 Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat.
20 464 (2000), as such act existed on January 1, 2009, and supersede,
21 modify, and limit the Electronic Signatures in Global and National
22 Commerce Act.

23 Sec. 20. Section 84-907.03, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 84-907.03 There is hereby created the Secretary of State

1 Administration Cash Fund. The fund shall consist of revenue
2 received to defray costs as authorized in sections 84-901 to
3 84-908. The revenue shall be collected by the Secretary of State
4 and remitted to the State Treasurer for credit to the fund. The
5 fund shall be used to (1) offset expenses incurred as a result of
6 such sections, ~~and~~ (2) administer the Address Confidentiality Act,
7 and (3) administer the Nebraska Uniform Athlete Agents Act.

8 Any money in the fund available for investment shall be
9 invested by the state investment officer pursuant to the Nebraska
10 Capital Expansion Act and the Nebraska State Funds Investment Act.

11 Sec. 21. This act becomes operative on January 1, 2010.

12 Sec. 22. If any provision of the Nebraska Uniform Athlete
13 Agents Act or its application to any person or circumstance is
14 held invalid, the invalidity does not affect other provisions or
15 applications of the act which can be given effect without the
16 invalid provision or application, and to this end the provisions of
17 the act are severable.

18 Sec. 23. Original section 84-907.03, Reissue Revised
19 Statutes of Nebraska, is repealed.