STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

2ND CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1465 By: Askins of the House

and

Morgan of the Senate

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to schools; creating the Uniform Athlete Agents Act; providing short title; defining terms; providing service agent for service of process on nonresident athlete agents; authorizing issuance of certain subpoenas; requiring registration of athlete agents; providing exception; making certain contracts void; requiring return of consideration received for void contract; providing procedure for application for registration as an athlete agent; requiring the application to contain certain information; providing for registration of individuals who hold certificate of registration or licensure as athlete agent in another state; providing for issuance of certificate of registration; authorizing the Secretary of State to refuse to issue a certificate of registration under certain circumstances; providing factors to be considered; providing procedure for renewal of registration; providing procedure for renewal if the applicant has applied for renewal in another state; providing duration of certificate of registration; authorizing the Secretary of State to suspend, revoke, or refuse to renew a registration under certain circumstances; requiring notice and hearing; providing for the application of the Administrative Procedures Act; authorizing issuance of temporary certificate of registration; providing application fee; directing distribution of application fee; providing requirements for agency contracts; making nonconforming contracts voidable; providing that student-athlete that voids an agency contract is not required to pay or return any consideration; requiring athlete agent to give record of the signed or authenticated agency contract to the student-athlete at time of execution; requiring certain notice; providing student-athlete the right to cancel agency contract within certain time; prohibiting student-athlete from waiving right; providing that student-athlete does not have to pay or return any consideration on a cancelled contract; requiring athlete agent to retain certain records for certain period of time; requiring records to be open for inspection by the Secretary of State; prohibiting certain acts; providing civil remedies; providing

scope of damages; providing when right of action accrues; providing that liability is several, but not joint; providing that the Uniform Athlete Agents Act does not restrict other rights, remedies or defenses; authorizing an administrative penalty; directing distribution of administrative penalties collected; providing for uniformity of application and construction; providing for certain electronic signatures; repealing 70 O.S. 2001, Sections 821.61, 821.62, 821.63, 821.64, 821.65, 821.66, 821.67, 821.68, 821.69, 821.70 and 821.71, which relate to athlete agents; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 821.81 of Title 70, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 19 of this act shall be known and may be cited as the "Uniform Athlete Agents Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 821.82 of Title 70, unless there is created a duplication in numbering, reads as follows:

As used in the Uniform Athlete Agents Act:

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

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

3. “Athletic director” means an individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or the athletic program for females, as appropriate;

4. “Contact” means a communication, direct or indirect, between an athlete and a student-athlete, to recruit or solicit the student-athlete to enter into an agency contract;

5. “Endorsement contract” means an agreement under which a student-athlete is employed or receives consideration to use on behalf of the other party any value that the student-athlete may have because of publicity, reputation, following, or fame obtained because of athletic ability or performance;

6. “Intercollegiate sport” means a sport played at the collegiate level for which eligibility requirements for participation by a student-athlete are established by a national association for the promotion or regulation of collegiate athletics;

7. “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity;

8. “Professional-sports-services contract” means an agreement under which an individual is employed, or agrees to render services, as a player on a professional sports team, with a professional sports organization, or as a professional athlete;

9. “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

10. “Registration” means registration as an athlete agent pursuant to the Uniform Athlete Agents Act;

11. “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States; and

12. “Student-athlete” means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student-athlete for purposes of that sport.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 821.83 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. By acting as an athlete agent in this state, a nonresident individual appoints the Secretary of State as the individual’s agent for service of process in any civil action in this state related to the individual’s acting as an athlete agent in this state.

B. The Secretary of State may issue subpoenas for any material that is relevant to the administration of the Uniform Athlete Agents Act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 821.84 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. Except as provided in subsection B of this section, an individual shall not act as an athlete agent in this state without holding a certificate of registration pursuant to Section 6 or 8 of this act.

B. Before being issued a certificate of registration, an individual may act as an athlete agent in this state for all purposes except signing an agency contract, if:

1. A student-athlete or another person acting on behalf of the student-athlete initiates communication with the individual; and

2. Within seven (7) days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in this state.

C. An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 821.85 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. An applicant for registration shall submit an application for registration to the Secretary of State in a form prescribed by the Secretary of State. An application filed under this section is a public record. The application shall be in the name of an individual and, except as provided in subsection B of this section, signed or otherwise authenticated by the applicant under penalty of perjury and state or contain:

1. The name of the applicant and the address of the applicant's principal place of business;

2. The name of the applicant's business or employer, if applicable;

3. Any business or occupation engaged in by the applicant for the five (5) years next preceding the date of submission of the application;

4. A description of the applicant's:

a. formal training as an athlete agent,

b. practical experience as an athlete agent, and

c. educational background relating to the applicant's activities as an athlete agent;

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

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

7. The names and addresses of all persons who are:

a. with respect to the athlete agent's business if it is not a corporation, the partners, members, officers, managers, associates, or profit-sharers of the business, and

b. with respect to a corporation employing the athlete agent, the officers, directors, and any shareholder of the corporation having an interest of five percent (5%) or greater;

8. Whether the applicant or any person named pursuant to paragraph 7 of this subsection has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony, and identify the crime;

9. Whether there has been any administrative or judicial determination that the applicant or any person named pursuant to paragraph 7 of this subsection made a false, misleading, deceptive, or fraudulent representation;

10. Any instance in which the conduct of the applicant or any person named pursuant to paragraph 7 of this subsection resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or educational institution;

11. Any sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to paragraph 7 of this subsection arising out of occupational or professional conduct; and

12. Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration

or licensure of the applicant or any person named pursuant to paragraph 7 of this subsection as an athlete agent in any state.

B. An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another state, may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to subsection A of this section. The Secretary of State shall accept the application and the certificate from the other state as an application for registration in this state if the application to the other state:

1. Was submitted in the other state within six (6) months next preceding the submission of the application in this state and the applicant certifies that the information contained in the application is current;

2. Contains information substantially similar to or more comprehensive than that required in an application submitted in this state; and

3. Was signed by the applicant under penalty of perjury.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 821.86 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. Except as provided in subsection B of this section, the Secretary of State shall issue a certificate of registration to an individual who complies with subsection A of Section 5 of this act or whose application has been accepted under subsection B of Section 5 of this act.

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

1. Been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony;

2. Made a materially false, misleading, deceptive, or fraudulent representation in the application or as an athlete agent;

3. Engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;

4. Engaged in conduct prohibited by Section 14 of this act;

5. Had a registration or licensure as an athlete agent suspended, revoked, or denied or been refused renewal of registration or licensure as an athlete agent in any state;

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

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

C. In making a determination under subsection B of this section, the Secretary of State shall consider:

1. How recently the conduct occurred;

2. The nature of the conduct and the context in which it occurred; and

3. Any other relevant conduct of the applicant.

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

E. An individual who has submitted an application for renewal of registration or licensure in another state, in lieu of submitting an application for renewal in the form prescribed pursuant to subsection D of this section, may file a copy of the application for

renewal and a valid certificate of registration or licensure from the other state. The Secretary of State shall accept the application for renewal from the other state as an application for renewal in this state if the application to the other state:

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

2. Contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this state; and

3. Was signed by the applicant under penalty of perjury.

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

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 821.87 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. The Secretary of State may suspend, revoke, or refuse to renew a registration for conduct that would have justified denial of registration under subsection B of Section 6 of this act.

B. The Secretary of State may deny, suspend, revoke, or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing. The Administrative Procedures Act shall apply to the Uniform Athlete Agents Act.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 821.88 of Title 70, unless there is created a duplication in numbering, reads as follows:

The Secretary of State may issue a temporary certificate of registration while an application for registration or renewal of registration is pending.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 821.89 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. An application for registration or renewal of registration must be accompanied by a fee in the following amount:

1. One Thousand Dollars ($1,000.00) for an initial application for registration;

2. One Thousand Dollars ($1,000.00) for an application for registration based upon a certificate of registration or licensure issued by another state;

3. One Thousand Dollars ($1,000.00) for an application for renewal of registration; or

4. One Thousand Dollars ($1,000.00) for an application for renewal of registration based upon an application for renewal of registration or licensure submitted in another state.

B. For the initial registration, the Secretary of State shall credit against the fee required by subsection A of this section the prorated value of any filing fee paid by an athlete agent for registration as an athlete agent prior to January 1, 2004, for the time from January 1, 2004, until the date the prior registration would have expired.

C. The Secretary of State shall return any surety bond deposit filed with the Secretary of State by an athlete agent prior to January 1, 2004.

D. All registration fees collected pursuant to this section shall be deposited in the Revolving Fund for the Office of the Secretary of State.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 821.90 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. An agency contract shall be in a record, signed or otherwise authenticated by the parties.

B. An agency contract shall state or contain:

1. The amount and method of calculating the consideration to be paid by the student-athlete for services to be provided by the

athlete agent under the contract and any other consideration the athlete agent has received or will receive from any other source for entering into the contract or for providing the services;

2. The name of any person not listed in the application for registration or renewal of registration who will be compensated because the student-athlete signed the agency contract;

3. A description of any expenses that the student-athlete agrees to reimburse;

4. A description of the services to be provided to the student-athlete;

5. The duration of the contract; and

6. The date of execution.

C. An agency contract shall contain, in close proximity to the signature of the student-athlete, a conspicuous notice in boldface type in capital letters stating:

WARNING TO STUDENT-ATHLETE

IF YOU SIGN THIS CONTRACT:

1. YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT-ATHLETE IN YOUR SPORT;

2. IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN SEVENTY-TWO (72) HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND

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

D. An agency contract that does not conform to this section is voidable by the student-athlete. If a student-athlete voids an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

E. The athlete agent shall give a record of the signed or otherwise authenticated agency contract to the student-athlete at the time of execution.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 821.91 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. Within seventy-two (72) hours after entering into an agency contract or before the next scheduled athletic event in which the student-athlete may participate, whichever occurs first, the athlete agent shall give notice in a record of the existence of the contract to the athletic director of the educational institution at which the student-athlete is enrolled or the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.

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

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 821.92 of Title 70, unless there is created a duplication in numbering, reads as follows:

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

B. A student-athlete may not waive the right to cancel an agency contract.

C. If a student-athlete cancels an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 821.93 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. An athlete agent shall retain the following records for a period of five (5) years:

1. The name and address of each individual represented by the athlete agent;

2. Any agency contract entered into by the athlete agent; and

3. Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract.

B. Records required by subsection A of this section to be retained shall be open to inspection by the Secretary of State during normal business hours.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 821.94 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, shall not:

1. Give any materially false or misleading information or make a materially false promise or representation;

2. Furnish anything of value to a student-athlete before the student-athlete enters into the agency contract; or

3. Furnish anything of value to any individual other than the student-athlete or another registered athlete agent.

B. An athlete agent shall not intentionally:

1. Initiate contact with a student-athlete unless the athlete agent registered pursuant to the Uniform Athlete Agents Act;

2. Refuse or fail to retain or permit inspection of the records required to be retained by Section 13 of this act;

3. Fail to register when required by Section 4 of this act;

4. Provide materially false or misleading information in an application for registration or renewal of registration;

5. Predate or postdate an agency contract; or

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

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 821.95 of Title 70, unless there is created a duplication in numbering, reads as follows:

An athlete agent who violates Section 14 of this act is guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than Five Hundred Dollars ($500.00) or by imprisonment not to exceed one (1) year, or both such fine and imprisonment.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 821.96 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. An educational institution has a right of action against an athlete agent or a former student-athlete for damages caused by a violation of the Uniform Athlete Agents Act.

B. Damages of an educational institution under subsection A of this section include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student-athlete, the educational institution was injured by a violation of the Uniform Athlete Agents Act or was penalized, disqualified, or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by reasonable self-imposed disciplinary action taken to mitigate sanctions likely to be imposed by such an organization.

C. A right of action under this section does not accrue until the educational institution discovers or by the exercise of

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

D. Any liability of the athlete agent or the former student-athlete under this section is several and not joint.

E. The Uniform Athlete Agents Act does not restrict rights, remedies, or defenses of any person under law or equity.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 821.97 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. The Secretary of State may assess an administrative penalty against an athlete agent not to exceed Twenty-five Thousand Dollars ($25.000.00) for a violation of the Uniform Athlete Agents Act.

B. All administrative penalties collected pursuant to this section shall be deposited in the Revolving Fund for the Office of the Secretary of State.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 821.98 of Title 70, unless there is created a duplication in numbering, reads as follows:

In applying and construing the Uniform Athlete Agents Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 821.99 of Title 70, unless there is created a duplication in numbering, reads as follows:

The provisions of the Uniform Athlete Agents Act governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000), and supersede,

modify, and limit the Electronic Signatures in Global and National Commerce Act.

SECTION 20. REPEALER 70 O.S. 2001, Sections 821.61, 821.62, 821.63, 821.64, 821.65, 821.66, 821.67, 821.68, 821.69, 821.70 and 821.71, are hereby repealed.

SECTION 21. This act shall become effective January 1, 2004.

49-1-7069 SD 05/22/03