

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Engrossed

Committee Substitute

for

Senate Bill 490

BY SENATORS GAUNCH AND BOSO

[Originating in the Committee on Government

Organization; Reported on February 15, 2018]

1 A BILL to amend and reenact §30-39-1, §30-39-2, §30-39-3, §30-39-4, §30-39-5, §30-39-6, §30-
2 39-7, §30-39-9, §30-39-10, §30-39-11, §30-39-12, §30-39-13, §30-39-14, §30-39-15, §30-
3 39-16, §30-39-19, and §30-39-21 of the Code of West Virginia, 1931, as amended, all
4 relating to adopting the Revised Uniform Athlete Agents Act of 2015; modifying short title;
5 defining terms; granting legislative rule-making authority to the Secretary of State;
6 establishing seven-day limit on athlete agent to register; requiring additional information
7 from applicant in registration process; eliminating language making applications or
8 renewals for athlete agent registration public records; providing for reciprocal registration;
9 updating required contents of reciprocal registration application; requiring Secretary of
10 State issue reciprocal license if certain criteria satisfied; requiring Secretary of State
11 cooperate with certain national organizations; allowing the Secretary of State to consider
12 whether the athlete agent has pled guilty or no contest to a crime of moral turpitude in
13 decision to issue registration; providing requirements for reciprocal renewals of
14 registration; providing Secretary of State authority to suspend or revoke registration for
15 same reasons as would justify refusal to issue certificate of registration; permitting
16 applicant to appeal adverse decision of Secretary of State; authorizing Secretary of State
17 promulgate procedural rules to implement appeal procedures; increasing fees for initial
18 license and renewal; adding required contract terms; requiring certain notices by athlete
19 agent to educational institutions; requiring educational institution notify Secretary of State
20 and others if it becomes aware of violation of article by athlete agent; allowing parent and
21 guardian of student athlete ability to cancel contract; requiring athlete agent to create
22 certain records; expanding scope of what constitutes prohibited conduct under the act;
23 expanding scope of who might engage in prohibited conduct under the act; expanding
24 scope of who can be charged with a criminal violation of the act; enabling student athletes
25 to bring civil action for act or omission of athlete agent; expanding scope of damages that
26 may be available in civil action; making a civil violation an unfair trade practice under West

27 Virginia law; establishing relation to the Electronic Signatures in Global and National
28 Commerce Act; and modifying effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 39. UNIFORM ATHLETE AGENTS ACT.

§30-39-1. Short title.

1 This article may be cited as the Revised Uniform Athlete Agents Act (2015).

§30-39-2. Definitions.

1 ~~In this article:~~

2 (4) "Agency contract" means an agreement in which a student athlete authorizes a person
3 to negotiate or solicit on behalf of the student athlete a professional-sports-services contract or
4 an endorsement contract.

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

11 (1) An individual, whether or not registered under this article, who:

12 (A) Directly or indirectly recruits or solicits a student athlete to enter into an agency contract
13 or, for compensation, procures employment or offers, promises, attempts, or negotiates to obtain
14 employment for a student athlete as a professional athlete or member of a professional sports
15 team or organization;

16 (B) For compensation or in anticipation of compensation related to a student athlete's
17 participation in athletics;

18 (i) Serves the student athlete in an advisory capacity on a matter related to finances,
19 business pursuits, or career management decisions, unless the individual is an employee of an

20 educational institution acting exclusively as an employee of the institution for the benefit of the
21 institution; or

22 (ii) Manages the business affairs of the student athlete by providing assistance with bills,
23 payments, contracts, or taxes;

24 (C) In anticipation of representing a student athlete for a purpose related to the athlete's
25 participation in athletics;

26 (i) Gives consideration to the student athlete or another person;

27 (ii) Serves the student athlete in an advisory capacity on a matter related to finances,
28 business pursuits, or career management decisions; or

29 (iii) Manages the business affairs of the student athlete by providing assistance with bills,
30 payments, contracts, or taxes; but

31 (2) Does not include an individual who:

32 (A) Acts solely on behalf of a professional sports team or organization; or

33 (B) Is a licensed, registered, or certified professional and offers or provides services to a
34 student athlete customarily provided by members of the profession, unless the individual:

35 (i) Also recruits or solicits the student athlete to enter into an agency contract;

36 (ii) Also, for compensation, procures employment or offers, promises, attempts, or
37 negotiates to obtain employment for the student athlete as a professional athlete or member of a
38 professional sports team or organization; or

39 (iii) Receives consideration for providing the services calculated using a different method
40 than for an individual who is not a student athlete.

41 ~~(3)~~ "Athletic director" means an individual responsible for administering the overall athletic
42 program of an educational institution or, if an educational institution has separately administered
43 athletic programs for male students and female students, the athletic program for males or the
44 athletic program for females, as appropriate.

45 ~~(4) "Contact" means a communication, direct or indirect, between an athlete agent and a~~
46 ~~student athlete, to recruit or solicit the student athlete to enter into an agency contract.~~

47 "Educational institution" means a public or private elementary school, secondary school, technical
48 or vocational school, community college, college, and university.

49 ~~(5) "Endorsement contract" means an agreement under which a student athlete is~~
50 ~~employed or receives consideration to use on behalf of the other party any value that the student~~
51 ~~athlete may have because of publicity, reputation, following, or fame obtained because of athletic~~
52 ~~ability or performance.~~

53 "Enrolled" means registered for courses and attending athletic practice or class. "Enrolls"
54 has a corresponding meaning.

55 ~~(6) "Intercollegiate sport" means a sport played at the collegiate level for which eligibility~~
56 ~~requirements for participation by a student athlete are established by a national association for~~
57 ~~the promotion or regulation of collegiate athletics.~~

58 "Interscholastic sport" means a sport played between educational institutions that are not
59 community colleges, colleges, or universities.

60 "Licensed, registered, or certified professional" means an individual licensed, registered,
61 or certified as an attorney, dealer in securities, financial planner, insurance agent, real estate
62 broker or sales agent, tax consultant, accountant, or member of a profession, other than that of
63 athlete agent, who is licensed, registered, or certified by the state or a nationally recognized
64 organization that licenses, registers, or certifies members of the profession on the basis of
65 experience, education, or testing.

66 ~~(7) "Person" means an individual, corporation, business trust, estate, trust, partnership,~~
67 ~~limited liability company, association, joint venture, government, governmental subdivision,~~
68 ~~agency, or instrumentality, public corporation, or any other legal or commercial entity.~~

69 ~~(8) "Professional-sports-services contract" means an agreement under which an individual~~
70 ~~is employed or agrees to render services, as a player on a professional sports team, with a~~

71 ~~professional sports organization, or as a professional athlete~~ as a professional athlete or agrees
72 to render services as a player on a professional sports team or with a professional sports
73 organization.

74 (9) "Record" means information that is inscribed on a tangible medium or that is stored in
75 an electronic or other medium and is retrievable in perceivable form.

76 "Recruit or solicit" means attempt to influence the choice of an athlete agent by a student
77 athlete or, if the student athlete is a minor, a parent or guardian of the student athlete. The term
78 does not include giving advice on the selection of a particular agent in a family, coaching, or social
79 situation unless the individual giving the advice does so because of the receipt or anticipated
80 receipt of an economic benefit, directly or indirectly, from the agent.

81 (40) "Registration" means registration as an athlete agent pursuant to this article.

82 "Sign" means with present intent to authenticate or adopt a record:

83 (1) To execute or adopt a tangible symbol; or

84 (2) To attach to or logically associate with the record an electronic symbol, sound, or
85 process.

86 (44) "State" means a state of the United States, the District of Columbia, Puerto Rico, the
87 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the
88 United States. References to "this state" mean the State of West Virginia.

89 (12) "Student-athlete" means an individual who ~~engages in, is eligible to engage in, or may~~
90 ~~be eligible in the future to engage in, any intercollegiate sport. If an individual is permanently~~
91 ~~ineligible to participate in a particular intercollegiate sport, the individual is not a student athlete~~
92 ~~for purposes of that sport~~ is eligible to attend an educational institution and engages in, is eligible
93 to engage in, or may be eligible in the future to engage in any interscholastic or intercollegiate
94 sport. The term does not include an individual permanently ineligible to participate in a particular
95 interscholastic or intercollegiate sport.

§30-39-3. ~~Service of process; subpoenas~~ Secretary of State; rule-making authority; service of process; subpoenas.

1 (a) The Secretary of State has authority to propose rules for legislative approval in
2 accordance with §29A-3-1 et seq. of this code to implement the provisions of this article.

3 (b) By acting as an athlete agent in this state, a nonresident individual appoints the
4 Secretary of State as the individual's agent for service of process in any civil action in this state
5 related to the individual's acting as an athlete agent in this state.

6 ~~(b)~~ (c) The Secretary of State may issue subpoenas for any material that is relevant to the
7 administration of this article.

§30-39-4. Athlete agents; registration required; void contracts.

1 (a) Except as otherwise provided in §30-39-4(b) of this code, an individual may not act as
2 an athlete agent in this state without holding a certificate of registration under ~~section six or eight~~
3 ~~of this article.~~

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

6 (1) A student athlete or another person acting on behalf of the student athlete initiates
7 communication with the individual; and

8 ~~(2) Within seven days after an initial act as an athlete agent, the individual submits an~~
9 ~~application for registration as an athlete agent in this state~~ Not later than seven days after an initial
10 act that requires the individual to register as an athlete agent, the individual submits an application
11 for registration as an athlete agent in this state.

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

§30-39-5. Registration as athlete agent; form; requirements; reciprocal registration.

1 (a) An applicant for registration shall submit an application for registration to the Secretary
2 of State in a form prescribed by the Secretary of State. ~~An application filed under this section is a~~

3 ~~public record.~~ The application must be in the name of an individual and, except as otherwise
4 provided in §30-39-5(b) of this code, signed or otherwise authenticated by the applicant under
5 penalty of perjury and state or contain:

6 (1) ~~The name of the applicant and the address of the applicant's principal place of business~~
7 The name, date, and place of birth of the applicant, and the following contact information for the
8 applicant:

9 (A) The address of the applicant's principal place of business;

10 (B) The applicant's work and mobile telephone numbers, if any; and

11 (C) Any means of communicating electronically with the applicant, including a facsimile
12 number, electronic mail address, and personal, and business or employer websites;

13 (2) The name of the applicant's business or employer, if applicable, including for each
14 business or employer, its mailing address, telephone number, organization form, and the nature
15 of the business;

16 (3) Each social media account with which the applicant or the applicant's business or
17 employer is affiliated;

18 (4) Any business or occupation engaged in by the applicant for the five years next
19 preceding the date of submission of the application, including self-employment and employment
20 by others, and any professional or occupational license, registration, or certification held by the
21 applicant during that time;

22 (4) (5) A description of the applicant's:

23 (A) Formal training as an athlete agent;

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

25 (C) Educational background relating to the applicant's activities as an athlete agent;

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

28 (6) The name of each student athlete for whom the applicant acted as an athlete agent
29 within five years prior to the date of the application or, if the individual is a minor, the name of the
30 parent or guardian of the minor, together with the athlete's sport and last known team;

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

33 (7) The names and addresses of ~~all persons who are~~ each person who is:

34 ~~(A) With respect to the athlete agent's business if it is not a corporation, the partners,~~
35 ~~members, officers, managers, associates or profit sharers of the business~~ A partner, member,
36 officer, manager, associate, or profit sharer who directly or indirectly holds an equity interest of
37 five percent or greater of the athlete agent's business if it is not a corporation; and

38 ~~(B) With respect to a corporation employing the athlete agent, the officers, directors and~~
39 ~~any shareholder of the corporation having an interest of five percent or greater~~ An officer or
40 director of a corporation employing the athlete agent or a shareholder having an interest of five
41 percent or greater in the corporation;

42 ~~(8) Whether the applicant or any person named pursuant to subdivision (7) of this~~
43 ~~subsection has been convicted of a crime that, if committed in this state, would be a crime~~
44 ~~involving moral turpitude or a felony and, identify the crime~~ A description of the status of any
45 application by the applicant, or any person named under §30-39-5(a)(7) of this code, for a state
46 or federal business, professional, or occupational license, other than as an athlete agent, from a
47 state or federal agency, including any denial, refusal to renew, suspension, withdrawal, or
48 termination of the license and any reprimand or censure related to the license.

49 ~~(9) Whether there has been any administrative or judicial determination that the applicant~~
50 ~~or any person named pursuant to subdivision (7) of this subsection has made a false, misleading,~~
51 ~~deceptive, or fraudulent representation~~ the applicant, or any person named under §30-39-5(a)(7)
52 of this code has pleaded guilty or no contest to, has been convicted of, or has charges pending

53 for a crime that would involve moral turpitude or be a felony if committed in this state and, if so,
54 identification of:

55 (A) The crime;

56 (B) The law-enforcement agency involved; and

57 (C) If applicable, the date of the conviction and the fine or penalty imposed;

58 ~~(10) Any instance in which the conduct of the applicant or any person named pursuant to~~
59 ~~subdivision (7) of this subsection resulted in the imposition of a sanction, suspension, or~~
60 ~~declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a~~
61 ~~student athlete or educational institution~~ Whether, 15 years prior to the date of application, the
62 applicant, or any person named under §30-39-5(a)(7) of this code has been a defendant or
63 respondent in a civil proceeding, including a proceeding seeking an adjudication of involuntary
64 hospitalization under §27-5-1 et seq. of this code, or a similar proceeding under the laws of this
65 state, any other state, or the United States and, if so, the date and a full explanation of each
66 proceeding;

67 ~~(11) Any sanction, suspension, or disciplinary action taken against the applicant or any~~
68 ~~person named pursuant to subdivision (7) of this subsection arising out of occupational or~~
69 ~~professional conduct; and~~ Whether the applicant, or any person named under §30-39-5(a)(7) of
70 this code has an unsatisfied judgment or a judgment of continuing effect, including alimony or a
71 domestic order in the nature of child support, which is not current at the date of the application;

72 ~~(12) Whether there has been any denial of an application for, suspension or revocation of,~~
73 ~~or refusal to renew, the registration or licensure of the applicant or any person named pursuant~~
74 ~~to subdivision (7) of this subsection as an athlete agent in any state~~ Whether, 10 years prior to the
75 date of application, the applicant, or any person named under §30-39-5(a)(7) of this code, was
76 adjudicated bankrupt or was an owner of a business that was adjudicated bankrupt;

77 (13) Whether there has been any administrative or judicial determination that the
78 applicant, or any person named under §30-39-5(a)(7) of this code, made a false, misleading,
79 deceptive, or fraudulent representation;

80 (14) Each instance in which conduct of the applicant, or any person named under §30-39-
81 5(a)(7) of this code, resulted in the imposition of a sanction, suspension, or declaration of
82 ineligibility to participate in an interscholastic, intercollegiate, or professional athletic event on a
83 student athlete or a sanction on an educational institution;

84 (15) Each sanction, suspension, or disciplinary action taken against the applicant, or any
85 person named under §30-39-5(a)(7) of this code, arising out of occupational or professional
86 conduct;

87 (16) Whether there has been a denial of an application for, suspension or revocation of,
88 refusal to renew, or abandonment of, the registration of the applicant, or any person named under
89 §30-39-5(a)(7) of this code, as an athlete agent in any state;

90 (17) Each state in which the applicant currently is registered as an athlete agent or has
91 applied to be registered as an athlete agent;

92 (18) If the applicant is certified or registered by a professional league or players
93 association:

94 (A) The name of the league or association;

95 (B) The date of certification or registration, and the date of expiration of the certification or
96 registration, if any; and

97 (C) If applicable, the date of any denial of an application for, suspension or revocation of,
98 refusal to renew, withdrawal of, or termination of, the certification or registration or any reprimand
99 or censure related to the certification or registration; and

100 (19) Any additional information required by the Secretary of State.

101 ~~(b) An individual who has submitted an application for, and holds a certificate of,~~
102 ~~registration or licensure as an athlete agent in another state, may submit a copy of the application~~

103 ~~and certificate in lieu of submitting an application in the form prescribed pursuant to subsection~~
104 ~~(a) of this section. The Secretary of State shall accept the application and the certificate from the~~
105 ~~other state as an application for registration in this state if the application to the other state~~ Instead
106 of proceeding under §30-39-5(a) of this code, an individual registered as an athlete agent in
107 another state may apply for registration as an athlete agent in this state by submitting to the
108 Secretary of State:

109 (1) ~~Was submitted in the other state within six months next preceding the submission of~~
110 ~~the application in this state and the applicant certifies that the information contained in the~~
111 ~~application is current~~ A copy of the application for registration in the other state:

112 (2) ~~Contains information substantially similar to or more comprehensive than that required~~
113 ~~in an application submitted in this state~~ A statement that identifies any material change in the
114 information on the application or verifies there is no material change in the information, signed
115 under penalty of perjury; and

116 (3) ~~Was signed by the applicant under penalty of perjury~~ A copy of the certificate of
117 registration from the other state, as well as a copy of the certificate of registration from any other
118 state in which the applicant is registered.

119 (c) The Secretary of State shall issue a certificate of registration to an individual who
120 applies for registration under §30-39-5(b) of this code if the Secretary of State determines:

121 (1) The application and registration requirements of the other state are substantially similar
122 to or more restrictive than this article; and

123 (2) The registration has not been revoked or suspended and no action involving the
124 individual's conduct as an athlete agent is pending against the individual or the individual's
125 registration in any state.

126 (d) For purposes of implementing §30-39-5(c) of this code, the Secretary of State shall:

127 (1) Cooperate with national organizations concerned with athlete agent issues and
128 agencies in other states which register athlete agents to develop a common registration form and

129 determine which states have laws that are substantially similar to or more restrictive than this
130 article; and

131 (2) Exchange information, including information related to actions taken against registered
132 athlete agents or their registrations, with those organizations and agencies.

§30-39-6. Certificate of registration; issuance or denial; renewal.

1 (a) Except as otherwise provided in §30-39-6(b) of this code, the Secretary of State shall
2 issue a certificate of registration to an individual who complies with §30-39-5(a) of this code or
3 whose application has been accepted under §30-39-5(b) of this code.

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

8 (1) ~~Been convicted of a crime that, if committed in this state, would be a crime involving~~
9 ~~moral turpitude or a felony~~ Pleaded guilty or no contest to, has been convicted of, or has charges
10 pending for a crime that would involve moral turpitude or be a felony if committed in this state;

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

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

15 (4) Engaged in conduct prohibited by §30-39-14 of this code;

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

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

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

23 (c) In making a determination under §30-39-6(b) of this code, the Secretary of State shall
24 consider:

25 (1) How recently the conduct occurred;

26 (2) The nature of the conduct and the context in which it occurred; and

27 (3) Any other relevant conduct of the applicant.

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

32 (e) An individual who has submitted an application for renewal of registration or licensure
33 in another state, in lieu of submitting an application for renewal in the form prescribed pursuant to
34 §30-39-6(d) of this code, may file a copy of the application for renewal and a valid certificate of
35 registration or licensure from the other state. The Secretary of State shall accept the application
36 for renewal from the other state as an application for renewal in this state if:

37 (1) ~~Was submitted in the other state within six months next preceding the filing in this state~~
38 ~~and the applicant certifies the information contained in the application for renewal is current~~ The
39 registration requirements of the other state are substantially similar to or more restrictive than this
40 article;

41 (2) ~~Contains information substantially similar to or more comprehensive than that required~~
42 ~~in an application for renewal submitted in this state~~ The renewed registration has not been
43 suspended or revoked and no action involving the individual's conduct as an athlete agent is
44 pending against the individual or the individual's registration in any state; and

45 (3) The application to the other state was signed by the applicant under penalty of perjury.

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

§30-39-7. Suspension, revocation, or refusal to renew registration.

1 (a) The Secretary of State may limit, suspend, revoke, or refuse to renew a registration for
2 conduct that would have justified denial of registration under §30-39-6(b) of this code.

3 (b) ~~The Secretary of State may deny, suspend, revoke or refuse to renew a certificate of~~
4 ~~registration or licensure only after proper notice and an opportunity for a hearing. The provisions~~
5 ~~of article five, chapter twenty-nine-a of this code apply to this article~~ The Secretary of State may
6 suspend or revoke the registration of an individual registered under §30-39-5(c) of this code, or
7 renewed under §30-39-6(e) of this code, for any reason for which the Secretary of State could
8 have refused to grant or renew registration, or for conduct that would justify refusal to issue a
9 certificate of registration under §30-39-6(b) of this code.

10 (c) An applicant may appeal a decision of the Secretary of State to refuse to issue, deny,
11 suspend, revoke, or refuse to renew a certificate of registration or licensure. The provisions of
12 §29A-5-1 et seq. of this code shall apply. The Secretary of State may promulgate procedural rules
13 to implement the provisions of this subsection.

§30-39-9. Registration and renewal fees.

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

- 3 (1) ~~Fifty dollars~~ \$100 for an initial application for registration;
4 (2) ~~Fifty dollars~~ \$100 for an application for registration based upon a certificate of
5 registration or licensure issued by another state;
6 (3) ~~Ten dollars~~ \$50 for an application for renewal of registration; or
7 (4) ~~Ten dollars~~ \$50 for an application for renewal of registration based upon an application
8 for renewal of registration or licensure submitted in another state.

§30-39-10. Required form of contract.

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

3 (b) An agency contract must state or contain:

4 (1) A statement that the athlete agent is registered as an athlete agent in this state and a
5 list of any other states in which the agent is registered as an athlete agent;

6 ~~(4)~~ (2) The amount and method of calculating the consideration to be paid by the student
7 athlete for services to be provided by the athlete agent under the contract and any other
8 consideration the athlete agent has received or will receive from any other source for entering into
9 the contract or for providing the services;

10 ~~(2)~~ (3) The name of any person not listed in the application for registration or renewal of
11 registration who will be compensated because the student athlete signed the agency contract;

12 ~~(3)~~ (4) A description of any expenses that the student athlete agrees to reimburse;

13 ~~(4)~~ (5) A description of the services to be provided to the student athlete;

14 ~~(5)~~ (6) The duration of the contract; and

15 ~~(6)~~ (7) The date of execution.

16 (c) An agency contract must contain, in close proximity to the signature of the student
17 athlete, a conspicuous notice in boldface type in capital letters stating:

18 WARNING TO STUDENT ATHLETE

19 IF YOU SIGN THIS CONTRACT:

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

22 (2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER ENTERING
23 INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR
24 ATHLETIC DIRECTOR SIGNING THIS CONTRACT OR BEFORE THE NEXT SCHEDULED
25 ATHLETIC EVENT IN WHICH YOU PARTICIPATE, WHICHEVER OCCURS FIRST, BOTH YOU
26 AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR THAT YOU HAVE

27 ENTERED INTO THIS CONTRACT AND PROVIDE THE NAME AND CONTACT INFORMATION
28 OF THE ATHLETE AGENT; AND

29 (3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT.
30 CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY AS A
31 STUDENT-ATHLETE IN YOUR SPORT.

32 (d) An agency contract that does not conform to this section is voidable by the student
33 athlete. If a student athlete voids an agency contract, the student athlete is not required to pay
34 any consideration under the contract or to return any consideration received from the athlete
35 agent to induce the student athlete to enter into the contract.

36 (e) The athlete agent shall give a record of the signed or otherwise authenticated agency
37 contract to the student athlete at the time of execution.

§30-39-11. Notice to educational institution.

1 (a) In this section, “communicating or attempting to communicate” means contacting or
2 attempting to contact by an in-person meeting, record, or any other method that conveys or
3 attempts to convey a message.

4 ~~(a) Within~~ (b) Not later than 72 hours after entering into an agency contract or before the
5 next scheduled athletic event in which the student athlete may participate, whichever occurs first,
6 the athlete agent shall give notice in a record of the existence of the contract to the athletic director
7 of the educational institution at which the student athlete is enrolled or which the athlete agent
8 has reasonable grounds to believe the student athlete intends to enroll.

9 ~~(b) Within~~ (c) Not later than 72 hours after entering into an agency contract or before the
10 next athletic event in which the student athlete may participate, whichever occurs first, the student
11 athlete shall inform the athletic director of the educational institution at which the student athlete
12 is enrolled that he or she has entered into an agency contract and the name and contact
13 information of the athlete agent.

14 (d) If an athlete agent enters into an agency contract with a student athlete and the athlete
15 subsequently enrolls at an educational institution, the agent shall notify the athletic director of the
16 institution of the existence of the contract not later than 72 hours after the agent knew or should
17 have known the athlete enrolled.

18 (e) If an athlete agent has a relationship with a student athlete before the student athlete
19 enrolls in an educational institution and receives an athletic scholarship from the institution, the
20 agent shall notify the institution of the relationship not later than 10 days after the enrollment if the
21 agent knows or should have known of the enrollment and:

22 (1) The relationship was motivated in whole or in part by the intention of the agent to recruit
23 or solicit the student athlete to enter an agency contract in the future; or

24 (2) The agent directly or indirectly recruited or solicited the student athlete to enter an
25 agency contract before the enrollment.

26 (f) An athlete agent shall give notice in a record to the athletic director of any educational
27 institution at which a student athlete is enrolled before the agent communicates or attempts to
28 communicate with:

29 (1) The student athlete or, if the student athlete is a minor, a parent or guardian of the
30 student athlete, to influence the student athlete or parent or guardian to enter into an agency
31 contract; or

32 (2) Another individual to have that individual influence the student athlete or, if the student
33 athlete is a minor, the parent or guardian of the student athlete to enter into an agency contract.

34 (g) If a communication or attempt to communicate with an athlete agent is initiated by a
35 student athlete or another individual on behalf of the student athlete, the agent shall notify in a
36 record the athletic director of any educational institution at which the student athlete is enrolled.
37 The notification must be made no later than 10 days after the communication or attempt.

38 (h) An educational institution that becomes aware of a violation of this article by an athlete
39 agent shall notify the Secretary of State and any professional league or players association with
40 which the institution is aware the agent is licensed or registered of the violation.

§30-39-12. Student athlete's right to cancel.

1 (a) A student athlete or, if the student athlete is a minor, the parent or guardian of the
2 student athlete may cancel an agency contract by giving notice of the cancellation to the athlete
3 agent ~~in a record within~~ no later than 14 days after the contract is signed.

4 (b) A student athlete or, if the student athlete is a minor, the parent or guardian of the
5 student athlete may not waive the right to cancel an agency contract.

6 (c) If a student athlete, parent, or guardian cancels an agency contract, the student athlete,
7 parent, or guardian is not required to pay any consideration under the contract or to return any
8 consideration received from the athlete agent to induce the student athlete to enter into the
9 contract.

§30-39-13. Required records.

1 (a) An athlete agent shall create and retain the following records for a period of five years:

2 (1) The name and address of each individual represented by the athlete agent;

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

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

6 (b) Records required by §30-39-13(a) of this code to be retained are open to inspection
7 by the Secretary of State during normal business hours.

§30-39-14. Prohibited conduct.

1 (a) An athlete agent, with the intent to ~~induce~~ influence a student athlete or, if the student
2 athlete is a minor, a parent, or guardian of the student athlete to enter into an agency contract,
3 may not take any of the following actions or encourage any other individual to take or assist any
4 other individual in taking any of the following actions on behalf of the agent:

5 (1) Give any materially false or misleading information or make a materially false promise
6 or representation;

7 (2) Furnish anything of value to a student athlete before the student athlete enters into the
8 agency contract; or

9 (3) Furnish anything of value to any individual other than the student athlete or another
10 registered athlete agent.

11 (b) An athlete agent may not intentionally do any of the following or encourage any other
12 individual to do any of the following on behalf of the agent:

13 (1) Initiate contact with a student athlete or, if the student athlete is a minor, a parent, or
14 guardian of the student athlete, to recruit or solicit the student athlete, parent, or guardian to enter
15 an agency contract unless registered under this article;

16 (2) Refuse or fail to retain or permit inspection of the records required to be retained by
17 §30-39-13 of this code;

18 (3) Fail to register when required by §30-39-4 of this code;

19 (4) Provide materially false or misleading information in an application for registration or
20 renewal of registration;

21 (5) Predate or postdate an agency contract; or

22 (6) Fail to notify a student athlete or, if the student athlete is a minor, a parent or guardian
23 of the student athlete, before the student athlete, parent, or guardian signs ~~or otherwise~~
24 ~~authenticates~~ an agency contract for a particular sport that the signing ~~or authentication~~ may make
25 the student athlete ineligible to participate as a student athlete in that sport.

§30-39-15. Criminal penalties.

1 ~~An athlete agent~~ Any person who violates §30-39-14(a) of this code is guilty of a felony
2 and, upon conviction thereof, shall be fined not more than \$50,000 or confined in a state
3 correctional facility for not less than one nor more than three years, or both so fined and confined.

4 ~~An athlete agent~~ Any person who violates §30-39-14(b) of this code is guilty of a
5 misdemeanor and, upon conviction thereof, shall be fined not more than \$500 or confined in a
6 county or regional jail for not more than one year, or both so fined and confined.

§30-39-16. Civil remedies.

1 (a) An educational institution ~~or student athlete~~ has a right of ~~may bring an action for~~
2 ~~damages~~ against an athlete agent if the institution or a ~~former~~ student athlete ~~for damages caused~~
3 is adversely affected by an act or omission of the agent by a violation of this article. ~~In an action~~
4 ~~under this section, the court may award to the prevailing party costs and reasonable attorney's~~
5 ~~fees~~ An educational institution or student athlete is adversely affected by an act or omission of
6 the agent only if, because of the act or omission, the institution or an individual who was a student
7 athlete at the time of the act or omission and enrolled in the institution:

8 (1) Is suspended or disqualified from participation in an interscholastic or intercollegiate
9 sports event by or under the rules of a state or national federation or association that promotes
10 or regulates interscholastic or intercollegiate sports; or

11 (2) Suffers financial damage.

12 (b) ~~Damages of an educational institution under subsection (a) of this section include~~
13 ~~losses and expenses incurred because, as a result of the conduct of an athlete agent or former~~
14 ~~student athlete, the educational institution was injured by a violation of this article or was~~
15 ~~penalized, disqualified or suspended from participation in athletics by a national association for~~
16 ~~the promotion and regulation of athletics, by an athletic conference, or by reasonable self-imposed~~
17 ~~disciplinary action taken to mitigate sanctions likely to be imposed by such an organization~~ A
18 plaintiff that prevails in an action under this section may recover actual damages, punitive
19 damages, costs, and reasonable attorney fees. An athlete agent found liable under this section
20 forfeits any right of payment for anything of benefit or value provided to the student athlete and
21 shall refund any consideration paid to the agent by or on behalf of the student athlete.

22 ~~(c) A right of action under this section does not accrue until the educational institution~~
23 ~~discovers or by the exercise of reasonable diligence would have discovered the violation by the~~
24 ~~athlete agent or former student athlete~~ A violation of this article is an unfair trade practice for
25 purposes of §47-11A-1 et seq. of this code.

26 ~~(d) Any liability of the athlete agent or the former student athlete under this section is~~
27 ~~several and not joint.~~

28 ~~(e) This article does not restrict rights, remedies, or defenses of any person under law or~~
29 ~~equity.~~

§30-39-19. Electronic Signatures in Global and National Commerce Act.

1 ~~The provisions of this article governing the legal effect, validity, or enforceability of~~
2 ~~electronic records or signatures, and of contracts formed or performed with the use of such~~
3 ~~records or signatures conform to the requirements of Section 102 of the Electronic Signatures in~~
4 ~~Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000), and supersede,~~
5 ~~modify, and limit the Electronic Signatures in Global and National Commerce Act. This article~~
6 modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act,
7 15 U.S.C. §7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15
8 U.S.C. §7001(c), or authorize electronic delivery of any of the notices described in Section 103
9 (b) of that act, 15 U.S.C. §7003(b).

§30-39-21. Effective date.

1 This article takes effect on July 1, ~~2004~~ 2018.

Note: Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.