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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2001

ENROLLED

SENATE BILL NO. 226

(By Senator Minard, et al **)**

PASSED April 14, 2001

In Effect July 1, 2001 ~~**Passage**~~

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SECRETARY OF STATE

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Senate Bill No. 226

(BY SENATORS MINARD, ANDERSON, BOWMAN, REDD,
UNGER, MINEAR, MITCHELL, ROWE, CALDWELL,
FANNING, SNYDER, SHARPE AND HUNTER)

[Passed April 14, 2001; to take effect July 1, 2001.]

AN ACT to amend chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirty-eight, relating to establishing the uniform athlete agents act; prohibited conduct; and penalties.

Be it enacted by the Legislature of West Virginia:

That chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article thirty-eight, to read as follows:

ARTICLE 38. UNIFORM ATHLETE AGENTS ACT.

§30-38-1. Short title.

1 This article may be cited as the Uniform Athlete Agents
2 Act.

§30-38-2. Definitions.

In this article:

(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 agent 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

34 national association for the promotion or regulation of
35 collegiate athletics.

36 (7) "Person" means an individual, corporation, business
37 trust, estate, trust, partnership, limited liability company,
38 association, joint venture, government; governmental
39 subdivision, agency, or instrumentality; public corpora-
40 tion, or any other legal or commercial entity.

41 (8) "Professional-sports-services contract" means an
42 agreement under which an individual is employed or
43 agrees to render services, as a player on a professional
44 sports team, with a professional sports organization, or as
45 a professional athlete.

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

49 (10) "Registration" means registration as an athlete
50 agent pursuant to this article.

51 (11) "State" means a state of the United States, the
52 District of Columbia, Puerto Rico, the United States
53 Virgin Islands or any territory or insular possession
54 subject to the jurisdiction of the United States.

55 (12) "Student-athlete" means an individual who engages
56 in, is eligible to engage in, or may be eligible in the future
57 to engage in, any intercollegiate sport. If an individual is
58 permanently ineligible to participate in a particular
59 intercollegiate sport, the individual is not a student-
60 athlete for purposes of that sport.

§30-38-3. Service of process; subpoenas.

1 (a) By acting as an athlete agent in this state, a nonresi-
2 dent individual appoints the secretary of state as the
3 individual's agent for service of process in any civil action
4 in this state related to the individual's acting as an athlete
5 agent in this state.

6 (b) The secretary of state may issue subpoenas for any
7 material that is relevant to the administration of this
8 article.

§30-38-4. Athlete agents: registration required; void contracts.

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

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

8 (1) A student-athlete or another person acting on behalf
9 of the student-athlete initiates communication with the
10 individual; and

11 (2) Within seven days after an initial act as an athlete
12 agent, the individual submits an application for registra-
13 tion as an athlete agent in this state.

14 (c) An agency contract resulting from conduct in viola-
15 tion of this section is void and the athlete agent shall
16 return any consideration received under the contract.

§30-38-5. Registration as athlete agent; form; requirements.

1 (a) An applicant for registration shall submit an applica-
2 tion for registration to the secretary of state in a form
3 prescribed by the secretary of state. An application filed
4 under this section is a public record. The application must
5 be in the name of an individual and, except as otherwise
6 provided in subsection (b) of this section, signed or other-
7 wise authenticated by the applicant under penalty of
8 perjury and state or contain:

9 (1) The name of the applicant and the address of the
10 applicant's principal place of business;

11 (2) The name of the applicant's business or employer, if
12 applicable;

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

16 (4) A description of the applicant's:

17 (A) Formal training as an athlete agent;

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

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

21 (5) The names and addresses of three individuals not
22 related to the applicant who are willing to serve as refer-
23 ences;

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

28 (7) The names and addresses of all persons who are:

29 (A) With respect to the athlete agent's business if it is
30 not a corporation, the partners, members, officers, manag-
31 ers, associates or profit-sharers of the business; and

32 (B) With respect to a corporation employing the athlete
33 agent, the officers, directors and any shareholder of the
34 corporation having an interest of five percent or greater;

35 (8) Whether the applicant or any person named pursuant
36 to subdivision (7) of this subsection has been convicted of
37 a crime that, if committed in this state, would be a crime
38 involving moral turpitude or a felony, and identify the
39 crime;

40 (9) Whether there has been any administrative or
41 judicial determination that the applicant or any person
42 named pursuant to subdivision (7) of this subsection has
43 made a false, misleading, deceptive, or fraudulent repre-
44 sentation;

45 (10) Any instance in which the conduct of the applicant
46 or any person named pursuant to subdivision (7) of this
47 subsection resulted in the imposition of a sanction, suspen-
48 sion, or declaration of ineligibility to participate in an
49 interscholastic or intercollegiate athletic event on a
50 student-athlete or educational institution;

51 (11) Any sanction, suspension, or disciplinary action
52 taken against the applicant or any person named pursuant
53 to subdivision (7) of this subsection arising out of occupa-
54 tional or professional conduct; and

55 (12) Whether there has been any denial of an application
56 for, suspension or revocation of, or refusal to renew, the
57 registration or licensure of the applicant or any person
58 named pursuant to subdivision (7) of this subsection as an
59 athlete agent in any state.

60 (b) An individual who has submitted an application for,
61 and holds a certificate of, registration or licensure as an
62 athlete agent in another state, may submit a copy of the
63 application and certificate in lieu of submitting an appli-
64 cation in the form prescribed pursuant to subsection (a) of
65 this section. The secretary of state shall accept the appli-
66 cation and the certificate from the other state as an
67 application for registration in this state if the application
68 to the other state:

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

73 (2) Contains information substantially similar to or more
74 comprehensive than that required in an application
75 submitted in this state; and

76 (3) Was signed by the applicant under penalty of per-
77 jury.

§30-38-6. Certificate of registration; issuance or denial; renewal.

1 (a) Except as otherwise provided in subsection (b) of this
2 section, the secretary of state shall issue a certificate of
3 registration to an individual who complies with subsection
4 (a), section five of this article or whose application has
5 been accepted under subsection (b), section five of this
6 article.

7 (b) The secretary of state may refuse to issue a certifi-
8 cate of registration if the secretary of state determines that
9 the applicant has engaged in conduct that has a significant
10 adverse effect on the applicant's fitness to act as an athlete
11 agent. In making the determination, the secretary of state
12 may consider whether the applicant has:

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

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

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

21 (4) Engaged in conduct prohibited by section fourteen of
22 this article;

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

26 (6) Engaged in conduct the consequence of which was
27 that a sanction, suspension, or declaration of ineligibility
28 to participate in an interscholastic or intercollegiate
29 athletic event was imposed on a student-athlete or educa-
30 tional institution; or

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

33 (c) In making a determination under subsection (b) of
34 this section, the secretary of state shall consider:

- 35 (1) How recently the conduct occurred;
- 36 (2) The nature of the conduct and the context in which
37 it occurred; and
- 38 (3) Any other relevant conduct of the applicant.
- 39 (d) An athlete agent may apply to renew a registration
40 by submitting an application for renewal in a form
41 prescribed by the secretary of state. An application filed
42 under this section is a public record. The application for
43 renewal must be signed by the applicant under penalty of
44 perjury and must contain current information on all
45 matters required in an original registration.
- 46 (e) An individual who has submitted an application for
47 renewal of registration or licensure in another state, in lieu
48 of submitting an application for renewal in the form
49 prescribed pursuant to subsection (d) of this section, may
50 file a copy of the application for renewal and a valid
51 certificate of registration or licensure from the other state.
52 The secretary of state shall accept the application for
53 renewal from the other state as an application for renewal
54 in this state if the application to the other state:
- 55 (1) Was submitted in the other state within six months
56 next preceding the filing in this state and the applicant
57 certifies the information contained in the application for
58 renewal is current;
- 59 (2) Contains information substantially similar to or more
60 comprehensive than that required in an application for
61 renewal submitted in this state; and
- 62 (3) Was signed by the applicant under penalty of per-
63 jury.
- 64 (f) A certificate of registration or a renewal of a registra-
65 tion is valid for two years.

**§30-38-7. Suspension, revocation, or refusal to renew registra-
tion.**

1 (a) The secretary of state may suspend, revoke or refuse
2 to renew a registration for conduct that would have
3 justified denial of registration under subsection (b), section
4 six of this article.

5 (b) The secretary of state may deny, suspend, revoke or
6 refuse to renew a certificate of registration or licensure
7 only after proper notice and an opportunity for a hearing.
8 The provisions of article five, chapter twenty-nine-a of
9 this code apply to this article.

§30-39-8. Temporary registration.

1 The secretary of state may issue a temporary certificate
2 of registration while an application for registration or
3 renewal of registration is pending.

§30-38-9. Registration and renewal fees.

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

4 (1) Fifty dollars for an initial application for registra-
5 tion;

6 (2) Fifty dollars for an application for registration based
7 upon a certificate of registration or licensure issued by
8 another state;

9 (3) Ten dollars for an application for renewal of registra-
10 tion; or

11 (4) Ten dollars for an application for renewal of registra-
12 tion based upon an application for renewal of registration
13 or licensure submitted in another state.

§30-38-10. Required form of contract.

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

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

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

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

14 (3) A description of any expenses that the student-
15 athlete agrees to reimburse;

16 (4) A description of the services to be provided to the
17 student-athlete;

18 (5) The duration of the contract; and

19 (6) The date of execution.

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

23 **WARNING TO STUDENT-ATHLETE**

24 **IF YOU SIGN THIS CONTRACT:**

25 **(1) YOU MAY LOSE YOUR ELIGIBILITY TO COM-**
26 **PETE AS A STUDENT-ATHLETE IN YOUR SPORT;**

27 **(2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN**
28 **72 HOURS AFTER ENTERING INTO THIS CONTRACT,**
29 **BOTH YOU AND YOUR ATHLETE AGENT MUST**
30 **NOTIFY YOUR ATHLETIC DIRECTOR; AND**

31 **(3) YOU MAY CANCEL THIS CONTRACT WITHIN 14**
32 **DAYS AFTER SIGNING IT. CANCELLATION OF THIS**
33 **CONTRACT MAY NOT REINSTATE YOUR ELIGIBIL-**
34 **ITY.**

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

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

§30-38-11. Notice to educational institution.

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

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

§30-38-12. Student-athlete's right to cancel.

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

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

6 (c) If a student-athlete cancels an agency contract, the
7 student-athlete is not required to pay any consideration
8 under the contract or to return any consideration received

9 from the athlete agent to induce the student-athlete to
10 enter into the contract.

§30-38-13. Required records.

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

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

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

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

10 (b) Records required by subsection (a) of this article to
11 be retained are open to inspection by the secretary of state
12 during normal business hours.

§30-38-14. Prohibited conduct.

1 (a) An athlete agent, with the intent to induce a student-
2 athlete to enter into an agency contract, may not:

3 (1) Give any materially false or misleading information
4 or make a materially false promise or representation;

5 (2) Furnish anything of value to a student-athlete before
6 the student-athlete enters into the agency contract; or

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

10 (b) An athlete agent may not intentionally:

11 (1) Initiate contact with a student-athlete unless regis-
12 tered under this article;

13 (2) Refuse or fail to retain or permit inspection of the
14 records required to be retained by section thirteen of this
15 article;

16 (3) Fail to register when required by section four of this
17 article;

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

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

21 (6) Fail to notify a student-athlete before the student-
22 athlete signs or otherwise authenticates an agency con-
23 tract for a particular sport that the signing or authentica-
24 tion may make the student-athlete ineligible to participate
25 as a student-athlete in that sport.

§30-38-15. Criminal penalties.

1 An athlete agent who violates subsection (a), section
2 fourteen of this article is guilty of a felony and, upon
3 conviction thereof, shall be fined not more than fifty
4 thousand dollars or confined in a state correctional facility
5 for not less than one nor more than three years, or both so
6 fined and confined.

7 An athlete agent who violates subsection (b), section
8 fourteen of this article is guilty of a misdemeanor and,
9 upon conviction thereof, shall be fined not more than five
10 hundred dollars or confined in a county or regional jail for
11 not more than one year, or both so fined and confined.

§30-38-16. Civil remedies.

1 (a) An educational institution has a right of action
2 against an athlete agent or a former student-athlete for
3 damages caused by a violation of this article. In an action
4 under this section, the court may award to the prevailing
5 party costs and reasonable attorney's fees.

6 (b) Damages of an educational institution under subsec-
7 tion (a) of this section include losses and expenses incurred
8 because, as a result of the conduct of an athlete agent or
9 former student-athlete, the educational institution was
10 injured by a violation of this article or was penalized,

11 disqualified or suspended from participation in athletics
12 by a national association for the promotion and regulation
13 of athletics, by an athletic conference, or by reasonable
14 self-imposed disciplinary action taken to mitigate sanc-
15 tions likely to be imposed by such an organization.

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

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

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

§30-38-17. Administrative penalty.

1 The secretary of state may assess a civil penalty against
2 an athlete agent not to exceed twenty-five thousand
3 dollars for a violation of this article.

§30-38-18. Uniformity of application and construction.

1 In applying and construing this uniform act, consider-
2 ation must be given to the need to promote uniformity of
3 the law with respect to its subject matter among states
4 that enact it.

**§30-38-19. Electronic signatures in global and national com-
merce act.**

1 The provisions of this article governing the legal effect,
2 validity, or enforceability of electronic records or signa-
3 tures, and of contracts formed or performed with the use
4 of such records or signatures conform to the requirements
5 of Section 102 of the Electronic Signatures in Global and
6 National Commerce Act, Pub. L. No. 106-229, 114 Stat.
7 464 (2000), and supersede, modify, and limit the Electronic
8 Signatures in Global and National Commerce Act.

§30-38-20. Severability.

1 If any provision of this article or its application to any
2 person or circumstance is held invalid, the invalidity does
3 not affect other provisions or applications of this article
4 which can be given effect without the invalid provision or
5 application, and to this end the provisions of this article
6 are severable.

§30-39-21. Effective date.

1 This article takes effect on the first day of July, two
2 thousand one.

Handwritten signatures and initials at the bottom of the page, including what appears to be 'M.A.' and 'S.D.'.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Handwritten Signature]

.....
Chairman Senate Committee

[Handwritten Signature]

.....
Chairman House Committee

Originated in the Senate.

To take effect July 1, 2001.

[Handwritten Signature]

.....
Clerk of the Senate

[Handwritten Signature]

.....
Clerk of the House of Delegates

[Handwritten Signature]

.....
President of the Senate

[Handwritten Signature]

.....
Speaker House of Delegates

The within is approved this the 2nd

Day of May, 2001.

[Handwritten Signature]

.....
Governor

PRESENTED TO THE

GOVERNOR

Date 5/1/01

Time 2:00 