

Hall of the House of Representatives
87th General Assembly - Regular Session, 2009
Amendment Form

Subtitle of House Bill No. 2107

"TO REQUIRE A SPORTS AGENT TO DISCLOSE THE ATHLETES AND COACHES
REPRESENTED BY THE SPORTS AGENT."

Amendment No. 1 to House Bill No. 2107.

Amend House Bill No. 2107 as originally introduced:

Delete everything after the enacting clause and substitute the following:

"SECTION 1. Arkansas Code Title 17, Chapter 16, is amended to add an additional subchapter to read as follows:

17-16-301. Short title.

This subchapter shall be known and may be cited as the "Coach Sports Agents Act".

17-16-302. Definitions.

As used in this subchapter:

(1) "Agency contract" means an agreement in which a coach authorizes a person to negotiate or solicit on behalf of the coach a coaching employment contract or an endorsement contract;

(2) "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;

(3) "Coach" means the head coach or an assistant coach of a male or female sports team at an educational institution;

(4) "Coaching employment contract" means a contract to employ an individual in a coaching capacity for an amateur or professional sports team or an amateur or professional sports organization;

(5)(A) "Coach sports agent" means an individual who directly or indirectly:

(i) Enters into an agency contract with a coach or recruits or solicits a coach to enter into an agency contract; or

(ii) Negotiates or attempts to negotiate a coaching employment contract.

(B) "Coach sports agent" includes an individual who represents to the public that the individual is a coach sports agent.

(C) "Coach sports agent" does not include an individual acting solely on behalf of an amateur or professional sports team or an



amateur or professional sports organization;

(6) "Contact" means a direct or indirect communication between a coach sports agent and a coach to recruit or solicit the coach to enter into an agency contract or a coaching employment contract;

(7) "Endorsement contract" means an agreement under which a coach is employed or receives consideration to use on behalf of the other party any value that the coach may have because of publicity, reputation, following, or fame obtained because of coaching ability or performance;

(8) "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;

(9) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, governmental agency, governmental instrumentality, public corporation, or any other legal or commercial entity;

(10) "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;

(11) "Registration" means registration as a coach sports agent pursuant to this subchapter; and

(12) "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.

17-16-303. Service of process – Subpoenas.

By acting as a coach sports 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 a coach sports agent in this state.

17-16-304. Coach sports agents – Registration required – Void contracts.

(a) Except as otherwise provided in subsection (b) of this section, an individual may not act as a coach sports agent in this state without holding a certificate of registration under § 17-16-306.

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

(1) A coach or another person acting on behalf of the coach initiates communication with the individual; and

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

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

17-16-305. Registration as coach sports agent – Form – Requirements.

(a)(1) An applicant for registration shall submit an application for registration to the Secretary of State in a form prescribed by the Secretary

of State.

(2) An application filed under this section is a public record.

(3) Except as provided in subsection (b) of this section, the application must be in the name of an individual, be signed or otherwise authenticated by the applicant under penalty of perjury, and state or contain:

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

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

(C) Any business or occupation engaged in by the applicant during the five (5) years before the date of submission of the application;

(D) A description of the applicant's:

(i) Formal training as a coach sports agent;

(ii) Practical experience as a coach sports agent;

and

(iii) Educational background relating to the applicant's activities as a coach sports agent;

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

(F) The name, sport, and last known team for each individual for whom the applicant acted as a coach sports agent during the five (5) years before the date of submission of the application;

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

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

(ii) With respect to a corporation or other business entity employing the coach sports agent, the officers, directors, and any shareholder of the corporation having an ownership interest of five percent (5%) or greater;

(H) Whether the applicant or any person named under subdivision (a)(3)(G) of this section 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;

(I) Whether there has been any administrative or judicial determination that the applicant or any person named under subdivision (a)(3)(G) of this section has made a false, misleading, deceptive, or fraudulent representation;

(J) Any instance in which the conduct of the applicant or any person named under subdivision (a)(3)(G) of this section resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an intercollegiate sport or amateur or professional athletic event;

(K) Any sanction, suspension, or disciplinary action taken against the applicant or any person named under subdivision (a)(3)(G) of this section arising out of occupational or professional conduct; and

(L) 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 under subdivision (a)(3)(G) of this section as a coach sports agent in any state.

(b)(1) An individual who has submitted an application for and holds a

certificate of registration or licensure as a coach sports agent in another state may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed under subsection (a) of this section.

(2) 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 from the other state:

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

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

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

17-16-306. Certificate of registration – Issuance or denial – Renewal.

(a) The Secretary of State shall issue a certificate of registration to an individual who complies with § 17-16-305(a) or whose application has been accepted under § 17-16-305(b).

(b)(1) A coach sports agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the Secretary of State.

(2) 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.

(c)(1) 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 under subsection (b), may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state.

(2) 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:

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

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

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

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

17-16-307. Registration and renewal fees.

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

(1) Five hundred dollars (\$500) for an initial application for registration;

(2) One hundred dollars (\$100) for an application for registration based upon a certificate of registration or licensure issued by another state;

(3) Five hundred dollars (\$500) for an application for renewal of registration; or

(4) One hundred dollars (\$100) for an application for renewal of registration based upon an application for renewal of registration or licensure submitted in another state.

(b) Fees received under this chapter by the Secretary of State shall be deposited into the State Treasury to the credit of the General Revenue Fund Account of the State Apportionment Fund.

17-16-308. Required form of contract.

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

(b) An agency contract must state or contain:

(1) The amount and method of calculating the consideration to be paid by the coach for services to be provided by the coach sports agent under the contract and any other consideration the coach sports 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 coach signed the agency contract;

(3) A description of any expenses that the coach agrees to reimburse;

(4) A description of the services to be provided to the coach;

(5) The duration of the contract; and

(6) The date of execution.

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

“WARNING TO COACH AND COACH SPORTS AGENT:

IF YOU SIGN THIS CONTRACT, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH THE COACH AND THE COACH SPORTS AGENT MUST NOTIFY THE COACH’S ATHLETIC DIRECTOR THAT AN AGENCY CONTRACT BETWEEN THE COACH AND COACH SPORTS AGENT HAS BEEN SIGNED.”; and

(d)(1) An agency contract that does not conform to this section is voidable by the coach.

(2) If a coach voids an agency contract, the coach is not required to pay any consideration under the contract or to return any consideration received from the coach sports agent to induce the coach to enter into the contract.

(e) The coach sports agent shall give a record of the signed or otherwise authenticated agency contract to the coach at the time of execution.

17-16-309. Notice to educational institution.

(a) Within seventy-two (72) hours after entering into an agency contract, negotiating or attempting to negotiate a coaching employment contract, or before the next scheduled athletic event in which the coach may participate, whichever occurs first, the coach sports agent shall give notice in a record of the existence of the contract or negotiations to the athletic director of the educational institution at which the coach is employed.

(b) Within seventy-two (72) hours after entering into an agency

contract, negotiating or attempting to negotiate a coaching employment contract, or before the next athletic event in which the coach may participate, whichever occurs first, the coach shall inform the athletic director of the educational institution at which the coach is employed that he or she has entered into an agency contract or negotiations for a coaching employment contract.

17-16-310. Required records.

(a) A coach sports agent shall retain the following records for a period of five (5) years:

(1) The name and address of each individual represented by the coach sports agent;

(2) Any agency contract entered into by the coach sports agent;
and

(3) Any direct costs incurred by the coach sports agent in the recruitment or solicitation of a coach to enter into an agency contract.

(b) Records required by subsection (a) of this section to be retained are open to public inspection during normal business hours.

17-16-311. Prohibited conduct.

A coach sports agent shall not in connection with an agency contract or negotiations for a coaching employment contract:

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

(2) Initiate contact with a coach unless registered under this subchapter;

(3) Refuse or fail to retain or permit inspection of the records required to be retained by § 17-16-310;

(4) Fail to register when required by § 17-16-304;

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

(6) Predate or postdate an agency contract.

17-16-312. Criminal penalties.

A coach sports agent who violates § 17-16-311 is guilty of a Class A misdemeanor.

17-16-313. Civil remedies.

(a) With respect to any coach sports agent who has had either a criminal or administrative penalty imposed against him or her under this subchapter, the Uniform Athlete Agents Act, § 17-16-101 et seq., or a similar law of any other state in two (2) or more prior instances:

(1)(A) An educational institution has a right of action against a coach sports agent or a former coach for damages caused by a violation of this subchapter.

(B) In an action under this section, the court may award to the prevailing party costs and reasonable attorney's fees;

(2) Damages of an educational institution under subdivision (a)(1) of this section include losses and expenses incurred because, as a result of the conduct of a coach sports agent or former coach, the educational institution was injured by a violation of this subchapter 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;

(3) 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 coach sports agent or former coach; and

(4) Any liability of the coach sports agent or the former coach under this section is several and not joint.

(b) This subchapter does not restrict rights, remedies, or defenses of any person under law or equity.

17-16-314. Administrative penalty.

The Attorney General may seek a civil penalty in any court of competent jurisdiction against a coach sports agent not to exceed fifty thousand dollars (\$50,000) for a violation of this subchapter.

17-16-315. Electronic signatures in global and national commerce act.

This subchapter 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 conforms 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 supersedes, modifies, and limits the Electronic Signatures in Global and National Commerce Act.

SECTION 2. Arkansas Code § 17-16-105(a)(10), concerning the registration disclosure requirements for an athlete agent, is amended to read as follows:

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

SECTION 3. Arkansas Code § 17-16-106(c), concerning the renewal of an athlete agent's registration. is amended to read as follows:

(c) 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)~~(b), 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.”

The Amendment was read _____

By: Representative Sample

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Chief Clerk