

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

INTERIM STUDY PROPOSAL 2009-166

State of Arkansas

As Engrossed: H4/2/09

87th General Assembly

A Bill

Regular Session, 2009

HOUSE BILL 2107

By: Representative Sample

Filed with: House Interim Committee on State Agencies and Governmental Affairs
pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

AN ACT TO REQUIRE A SPORTS AGENT TO DISCLOSE THE
ATHLETES AND COACHES REPRESENTED BY THE SPORTS
AGENT; AND FOR OTHER PURPOSES.

Subtitle

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

*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,*



1 if an educational institution has separately administered athletic programs
2 for male students and female students, the athletic program for males or the
3 athletic program for females, as appropriate;

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

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

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

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

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

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

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

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

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

27 (8) "Intercollegiate sport" means a sport played at the
28 collegiate level for which eligibility requirements for participation by a
29 student-athlete are established by a national association for the promotion
30 or regulation of collegiate athletics;

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

36 (10) "Record" means information that is inscribed on a tangible

1 medium or that is stored in an electronic or other medium and is retrievable
2 in perceivable form;

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

5 (12) "State" means a state of the United States, the District of
6 Columbia, Puerto Rico, the United States Virgin Islands, or any territory or
7 insular possession subject to the jurisdiction of the United States.

8
9 17-16-303. Service of process – Subpoenas.

10 By acting as a coach sports agent in this state, a nonresident
11 individual appoints the Secretary of State as the individual's agent for
12 service of process in any civil action in this state related to the
13 individual's acting as a coach sports agent in this state.

14
15 17-16-304. Coach sports agents – Registration required – Void
16 contracts.

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

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

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

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

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

31
32 17-16-305. Registration as coach sports agent – Form – Requirements.

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

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

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

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

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

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

11 (D) A description of the applicant's:

12 (i) Formal training as a coach sports agent;

13 (ii) Practical experience as a coach sports agent;

14 and

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

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

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

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

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

26 (ii) With respect to a corporation or other business
27 entity employing the coach sports agent, the officers, directors, and any
28 shareholder of the corporation having an ownership interest of five percent
29 (5%) or greater;

30 (H) Whether the applicant or any person named under
31 subdivision (a)(3)(G) of this section has been convicted of a crime that if
32 committed in this state would be a crime involving moral turpitude or a
33 felony, and identify the crime;

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

1 fraudulent representation;

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

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

10 (L) Whether there has been any denial of an application
11 for, suspension or revocation of, or refusal to renew the registration or
12 licensure of the applicant or any person named under subdivision (a)(3)(G) of
13 this section as a coach sports agent in any state.

14 (b)(1) An individual who has submitted an application for and holds a
15 certificate of registration or licensure as a coach sports agent in another
16 state may submit a copy of the application and certificate in lieu of
17 submitting an application in the form prescribed under subsection (a) of this
18 section.

19 (2) The Secretary of State shall accept the application and the
20 certificate from the other state as an application for registration in this
21 state if the application from the other state:

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

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

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

30
31 17-16-306. Certificate of registration – Issuance or denial – Renewal.

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

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

1 of State.

2 (2) The application for renewal must be signed by the applicant
3 under penalty of perjury and must contain current information on all matters
4 required in an original registration.

5 (c)(1) An individual who has submitted an application for renewal of
6 registration or licensure in another state, in lieu of submitting an
7 application for renewal in the form prescribed under subsection (b), may file
8 a copy of the application for renewal and a valid certificate of registration
9 or licensure from the other state.

10 (2) The Secretary of State shall accept the application for
11 renewal from the other state as an application for renewal in this state if
12 the application to the other state:

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

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

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

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

22
23 17-16-307. Registration and renewal fees.

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

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

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

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

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

36 (b) Fees received under this chapter by the Secretary of State shall

1 be deposited into the State Treasury to the credit of the General Revenue
2 Fund Account of the State Apportionment Fund.

3
4 17-16-308. Required form of contract.

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

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

8 (1) The amount and method of calculating the consideration to be
9 paid by the coach for services to be provided by the coach sports agent under
10 the contract and any other consideration the coach sports agent has received
11 or will receive from any other source for entering into the contract or for
12 providing the services;

13 (2) The name of any person not listed in the application for
14 registration or renewal of registration who will be compensated because the
15 coach signed the agency contract;

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

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

19 (5) The duration of the contract; and

20 (6) The date of execution.

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

24 "WARNING TO COACH AND COACH SPORTS AGENT:

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

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

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

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

1 execution.

2
3 17-16-309. Notice to educational institution.

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

10 (b) Within seventy-two (72) hours after entering into an agency
11 contract, negotiating or attempting to negotiate a coaching employment
12 contract, or before the next athletic event in which the coach may
13 participate, whichever occurs first, the coach shall inform the athletic
14 director of the educational institution at which the coach is employed that
15 he or she has entered into an agency contract or negotiations for a coaching
16 employment contract.

17
18 17-16-310. Required records.

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

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

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

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

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

29
30 17-16-311. Prohibited conduct.

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

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

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

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

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

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

6 (6) Predate or postdate an agency contract.

7
8 17-16-312. Criminal penalties.

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

11
12 17-16-313. Civil remedies.

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

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

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

22 (2) Damages of an educational institution under subdivision
23 (a)(1) of this section include losses and expenses incurred because, as a
24 result of the conduct of a coach sports agent or former coach, the
25 educational institution was injured by a violation of this subchapter or was
26 penalized, disqualified, or suspended from participation in athletics by a
27 national association for the promotion and regulation of athletics, by an
28 athletic conference, or by reasonable self-imposed disciplinary action taken
29 to mitigate sanctions likely to be imposed by such an organization;

30 (3) A right of action under this section does not accrue until
31 the educational institution discovers or by the exercise of reasonable
32 diligence would have discovered the violation by the coach sports agent or
33 former coach; and

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

36 (b) This subchapter does not restrict rights, remedies, or defenses of

1 any person under law or equity.

3 17-16-314. Administrative penalty.

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

8 17-16-315. Electronic signatures in global and national commerce act.

9 This subchapter governing the legal effect, validity, or enforceability
10 of electronic records or signatures, and of contracts formed or performed
11 with the use of such records or signatures conforms to the requirements of
12 Section 102 of the Electronic Signatures in Global and National Commerce Act,
13 Pub. L. No. 106-229, 114 Stat. 464 (2000), and supersedes, modifies, and
14 limits the Electronic Signatures in Global and National Commerce Act.

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

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

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

27 (c) An individual who has submitted an application for renewal of
28 registration or licensure in another State, in lieu of submitting an
29 application for renewal in the form prescribed pursuant to subsection ~~(d)~~ (b),
30 may file a copy of the application for renewal and a valid certificate of
31 registration or licensure from the other State. The Secretary of State shall
32 accept the application for renewal from the other State as an application for
33 renewal in this State if the application to the other State:

34 (1) was submitted in the other State within six (6) months next
35 preceding the filing in this State and the applicant certifies the
36 information contained in the application for renewal is current;

1 (2) contains information substantially similar to or more
2 comprehensive than that required in an application for renewal submitted in
3 this State; and
4 (3) was signed by the applicant under penalty of perjury.

5
6 /s/ Sample
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