

STATUTORY REGULATION OF AGENT GIFTS TO ATHLETES*

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• This is the fifth article in a six article series that details athlete agent regulation and liability. The first article, *Analysis of Civil and Criminal Penalties in Athlete Agent Statutes and Support for the Imposition of Civil and Criminal Liability Upon Athletes*, appeared in 8 SETON HALL J. SPORT L. 1 (1998). The second, *The Art of Being a Sports Agent in More Than One State: Analysis of Registration and Reporting Requirements and Development of a Model Strategy*, was published in 8 SETON HALL J. SPORT L. 419 (1998). Article three, *Escaping Athlete Agent Statutory Regulation: Loopholes and Constitutional Defectiveness Based on Tri-Parte Classification of Athletes*, appeared in 9 SETON HALL J. SPORT L. 1 (1999). The fourth and sixth articles, *Athlete Agent Solicitation of Athlete Clients: Statutory Authorization and Prohibition* and *Athlete Agent Contracts: Legislative Regulation*, are printed in 10 SETON HALL J. SPORT L. 205 (2000), and 10 SETON HALL J. SPORT L. 317 (2000), respectively.

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I. INTRODUCTION

Immediately before the quarterback exits the dorm and moves toward the agent's limo, the agent moves into blitz formation inside the limo. The quarterback enters the limo and the agent quickly reaches toward the quarterback to forward lateral him a glass of the bubbly. The not-quite-yet-of-legal-drinking-age quarterback takes the champagne snap, sits down and immediately takes a swig. The agent, with an illegal use of his hands, turns and screen passes the quarterback a contraband Cuban cigar and a box. The agent whispers to the quarterback, telling him politely, and with a grin of confidence, to open the box. The quarterback's eyes widen, as they gaze upon an enchanting cell phone, glistening diamond and gold watch, and dazzling set of free Super Bowl tickets.

And that is only the beginning. A beautiful woman, super model potential of course, sensuously moves over to the quarterback, placing her hand on his knee while smiling. The quarterback awkwardly smiles back, in hopeful bewilderment, as she praises his latest stats. The limo driver joins the smiling, lets out a loud sinister chuckle and speeds out of the dorm parking lot with tires squealing. The sleeping defensive (dorm) guard briefly lifts his head and almost simultaneously rests it on the desk again. The journey into the quarterback's not-soon-ending night of pleasure begins.

(Meanwhile, Dean Chump, the athletic director of Academics First University, wonders why the quarterback is not home answering his phone. The athletic director cannot wait to talk to the quarterback about the quality of education that will be provided to him at AFU, an institution priding itself on its motto of "putting education above all else." Tough call, Chump.)

The enticing nature of such agent gifts sparked the legislatures of twenty-eight states to enact athlete agent statutes.² However, it is virtually

2. Actually, a twenty-ninth state formerly enacted an athlete agent statute but recently repealed its statute on April 30, 1999. See Wash. H.B. No. 1251, 56th Legis., Reg. Sess. (1999). The following statutes currently regulate athlete agents: Alabama: ALA. CODE §§ 8-26-1 to -41 (WESTLAW through 1999 Reg. Sess.); Arizona: ARIZ. REV. STAT. ANN. §§ 15-1761 to -1765 (West, WESTLAW through 1999 1st Reg. Sess. and 2d Special Sess.); Arkansas: ARK. CODE ANN. §§ 17-16-101 to -203 (Michie, WESTLAW through 1999 Reg. Sess.); California: CAL. BUS. &

impossible for athlete agents to keep abreast of statutory changes in this rapidly changing environment, especially considering that athlete agent statutes regulate numerous areas of agent activity, including but not limited to: *remedies and penalties*,³ *registration and reporting requirements*,⁴ *solicitation of athlete clients*,⁵ *execution of contracts with athletes*,⁶ and *agent gifts to athletes*.⁷ To put it mildly, athlete agents face an administrative nightmare, especially if they conduct business in several states and therefore subject themselves to the jurisdiction and laws of each such state.⁸ Luckily for the agents, the athlete agent statutes currently in

PROF. CODE §§ 6106.7, 18895-18897.93 (West 1990); Colorado: COLO. REV. STAT. ANN. §§ 23-16-101 to -108 (West 1997); Connecticut: CONN. GEN. STAT. ANN. §§ 20-553 to -569 (West 1998); Florida: FLA. STAT. ANN. §§ 468.451- .4571 (West 1998); Georgia: GA. CODE ANN. §§ 43-4A-1 to -19 (WESTLAW through 1999 Gen. Ass.); Indiana: IND. CODE ANN. §§ 35-46-4-1 to -4 (West 1998); Iowa: IOWA CODE ANN. §§ 9A.1-.12 (West 1995); Kansas: KAN. STAT. ANN. §§ 44-1501 to -1515 (WESTLAW through 1998 Reg. Sess.); Kentucky: KY. REV. STAT. ANN. §§ 518.010-.080, §§ 164.680-.689 (Michie, WESTLAW through 1998 Reg. Sess.); Louisiana: LA. REV. STAT. ANN. §§ 4:420-33 (West, WESTLAW through 1999 Reg. Sess.); Maryland: MD. CODE ANN. BUS. REG. §§ 4-401 to -426 (WESTLAW through 1998 Reg. Sess.); Michigan: MICH. COMP. LAWS ANN. § 750.411e (West 1991); Minnesota: MINN. STAT. ANN. § 325E.33 (West 1995); Mississippi: MISS. CODE ANN. §§ 73-41-1 to -23 (1999); Missouri: MO. ANN. STAT. §§ 317.018, 436.200-.212 (West, WESTLAW through 1999 1st Ext. Sess.); Nevada: NEV. REV. STAT. ANN. §§ 398.015-.255, 597.920 (Michie, WESTLAW through 1997 Reg. Sess.); North Carolina: N.C. GEN. STAT. §§ 78C-71 to -81 (Michie, WESTLAW through 1998 Cum. Supp.); North Dakota: N.D. CENT. CODE §§ 9-15-01 to -05 (WESTLAW through 1999 Reg. Sess.); Ohio: OHIO REV. CODE ANN. §§ 4771.01-.99 (Anderson, WESTLAW through portion of 123rd Gen. Ass.); Oklahoma: OKLA. STAT. ANN. tit. 70, §§ 821.61-.71 (West 1997); Oregon: H.B. 3628, 70th Leg., Reg. Sess. §§ 1-12 (Or. 1999); Pennsylvania: 5 PA. CONS. STAT. ANN. §§ 3101-3312 (West, WESTLAW through Act 1999-47), 18 PA. CONS. STAT. ANN. § 7107 (West, WESTLAW through Act 1999-47); South Carolina: S.C. CODE ANN. §§ 16-1-90, -100, 59-102-10 to -50 (Law. Co-op., WESTLAW through 1999 Reg. Sess.); Tennessee: TENN. CODE ANN. §§ 49-7-2111 to -2121 (West, WESTLAW through 1999 Reg. Sess.); Texas: TEX. OCC. CODE ANN. §§ 2051.001-.533 (West, WESTLAW through 1999 Reg. Sess.).

3. As to civil, administrative and criminal remedies and penalties imposed on athlete agents, see generally Rob Remis, *Analysis of Civil and Criminal Penalties in Athlete Agent Statutes and Support for the Imposition of Civil and Criminal Liability Upon Athletes*, 8 SETON HALL J. SPORT L. 1 (1998) (hereinafter Remis, *Remedies and Penalties*).

4. As to registration and reporting requirements imposed on agents, see generally, Rob Remis, *The Art of Being a Sports Agent in More Than One State: Analysis of Registration and Reporting Requirements and Development of a Model Strategy*, 8 SETON HALL J. SPORT L. 419 (1998) (hereinafter Remis, *Registration and Reporting*).

5. As to agent solicitation of athlete clients, see Diane Sudia and Rob Remis, *Athlete Agent Solicitation of Athlete Clients: Statutory Authorization and Prohibition*, 10 SETON HALL J. SPORT L. 205 (2000) (hereinafter Sudia and Remis, *Agent Solicitation*).

6. As to agent contracts executed with athletes, as well as agent advertisements and misrepresentations, see Diane Sudia and Rob Remis, *Athlete Agent Contracts: Legislative Regulation*, 10 SETON HALL J. SPORT L. 317 (2000) (hereinafter Sudia and Remis, *Agent Contracts*).

7. See *infra* Part II.

8. As to the jurisdictional and constitutional defects and loopholes contained within each of the athlete agent statutes, predicated upon a tri-partite statutory classification of athletes, see Rob

existence contain numerous constitutional defects, jurisdictional flaws and loopholes wide enough to drive a monster pick-up truck through.⁹

Part II of this article commences with an analysis of the regulations promulgated by the National Collegiate Athletic Association (NCAA), specifically governing agent gifts to athletes. Part II then analyzes and summarizes several types of regulations contained within the athlete agent statutes that either authorize or prohibit certain gifts to athletes. A few preliminary points warrant discussion. First, although this article utilizes the generic term *gift*, most statutory provisions speak in terms of “offers,” “payments,” “promises,” “inducements,” “gifts” and “loans.” Since the statutes do not contain different mandates for loans and gifts, but rather, legislate these activities synonymously, this article broadly utilizes the term *gift* for simplicity. However, the reader should remember that the provisions analyzed in this article also relate to loans or any other types of payments, offers or inducements to athletes.

Second, every type of *gift* analyzed in this article is technically “*contact*” in the most basic application of the term. Accordingly, if a particular statute mandates that an agent provide written notice to an athletic director of any *gift* made to an athlete, the agent should follow that mandate.¹⁰ The agent should follow this mandate even if the statute contains a *different* mandate for *contact in general* (as opposed to *gifts*) and even though a gift is technically a contact as well. The statutory canon of construction that the specific prevails over the general applies to this scenario.¹¹ If, on the other hand, the statute makes no specific reference to the regulation of *gifts*, but requires an agent to provide written notice to an athletic director of any *contact* made with an athlete, then the athlete agent should follow the mandates of the *contact* regulatory provisions whenever providing gifts to athletes.¹²

This article categorizes the different types of statutory regulations pertaining to agent gifts within each statute. In turn, this categorization, as displayed in Appendices A and B, allows the reader to better understand the numerous authorizations, mandates and prohibitions imposed on

Remis and Diane Sudia, *Escaping Athlete Agent Statutory Regulation: Loopholes and Constitutional Defectiveness Based on Tri-Parte Classification of Athletes*, 9 SETON HALL J. SPORT L. 1 (1999) (hereinafter Remis and Sudia, *Escaping Athlete Agent Regulation*).

9. *See id.*

10. *See infra* Part II.B.4. and Appendices A and B.

11. *See Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992).

12. *See infra* Part II.B.4. For the notice requirements for agent *contact* (as opposed to *gifts*) and a more detailed analysis of the interrelationship between the provisions governing agent contacts (in general), solicitation, gifts and contracts, *see* Sudia and Remis, *Agent Solicitation*, *supra* note 5, Part II.A.

athlete agents when providing gifts, either directly or indirectly, to athletes. Appendix B then categorizes and summarizes the various athlete agent statutes containing the gift provisions analyzed in Appendix A.

II. REGULATED AGENT GIFTS TO ATHLETES

A. *National Collegiate Athletic Association Rules on Gifts*

The NCAA expressed “The Principle of Amateurism” in the following terms: “Student-athletes shall be amateurs in an intercollegiate sport, and their participation should be motivated primarily by education and by the physical, mental and social benefits to be derived. Student participation in intercollegiate athletics is an avocation, and student-athletes should be protected from exploitation by professional and commercial enterprises.”¹³ With respect to an athlete agent’s gifts to an athlete, the NCAA regulations provide, in pertinent part:

12.3.1.2 Benefits From Prospective Agents. An individual shall be ineligible . . . if he or she (or his or her relatives or friends) accepts transportation or other benefits from:

(a) Any person who represents any individual in the marketing of his or her athletics ability. The receipt of such expenses constitutes compensation based on athletics skill and is an extra benefit not available to the student body in general; or

(b) An agent, even if the agent has indicated that he or she has no interest in representing the student-athlete in the marketing of his or her athletics ability or reputation and does not represent individuals in the student-athlete’s sport.¹⁴

The NCAA regulations further provide:

12.1.1 Amateur Status. An individual loses amateur status and thus shall not be eligible for intercollegiate competition in a particular sport if the individual:

(a) Uses his or her athletics skill (directly or indirectly) for pay in any form in that sport;

(b) Accepts a promise of pay even if such pay is to be received following completion of intercollegiate athletics participation;

13. NCAA CONST. OPERATING BYLAWS AND ADMINISTRATIVE BYLAWS, art. 2, § 2.9, reprinted in 1999-00 NCAA DIVISION I MANUAL [hereinafter NCAA MANUAL].

14. *Id.* § 3.1.2.

* * *

(d) Receives, directly or indirectly, a salary, reimbursement of expenses or any other form of financial assistance from a professional sports organization based upon athletics skill or participation, except as permitted by NCAA rules and regulations.¹⁵

The NCAA promulgated numerous regulations pertaining to gifts and other payments to prospective or enrolled student-athletes. This article summarizes some of those regulations so the reader can understand the interplay between the NCAA regulations and the state athlete agent statutes. First, the NCAA deems it unethical for a prospective or enrolled student-athlete, or a current or former institutional staff member, to knowingly have any involvement in offering or providing an improper inducement, extra benefit, or improper financial aid to a prospective or enrolled student-athlete.¹⁶ Further, NCAA amateur status may be lost as a result of activities prior to enrollment in college, depending on whether the particular NCAA regulation utilizes the term "individual" (i.e., pre-college student athletes included) or "student-athlete" (i.e., college athletes only).¹⁷

"Pay" is defined as "the receipt of funds, awards or benefits not permitted by the governing legislation of the Association for participation in athletics."¹⁸ The NCAA also sets forth a detailed list of prohibited forms of "pay."¹⁹ Another applicable NCAA regulation governs compensation for a student-athlete's employment. Specifically, all compensation paid to a student-athlete must be: (1) consistent with NCAA limitations on financial aid; (2) only for work actually performed; and (3) at a rate commensurate with the going rate for similar services in the athlete's locality.²⁰

The NCAA also places several restrictions on payment of a student-athlete's entertainment and transportation expenses, through different provisions governing prospective and enrolled student-athletes.²¹ The

15. *Id.* § 12.1.1.

16. *See id.* § 10.1.

17. NCAA MANUAL, *supra* note 13, § 12.01.3. Section 12.02.5 defines the term "student-athlete" as utilized throughout the NCAA regulations. For a detailed analysis of how the various athlete agent statutes utilize, in an extremely confusing fashion, several terms such as "athlete," "student-athlete," "local athlete," "Oklahoma NCAA athlete" and "Oklahoma non-NCAA athlete," *see generally* Remis and Sudia, *Escaping Athlete Agent Regulation*, *supra* note 8.

18. NCAA MANUAL, *supra* note 13, §12.02.2.

19. *See* NCAA MANUAL, *supra* note 13, § 12.1.1.1.

20. *See* NCAA MANUAL, *supra* note 13, § 12.4.1.

21. *See, e.g.*, NCAA MANUAL, *supra* note 13, §§ 13.01.2, 13.5-13.8 (regarding entertainment and transportation expenses associated with the recruiting of prospective student-athletes), art. 16 (regarding awards, benefits and expenses for enrolled student-athletes).

NCAA devotes Article 16 of its Operating Bylaws to regulating “Awards, Benefits and Expenses for Enrolled Student-Athletes.”²² Of particular importance, if a student-athlete receives an award, benefit or expense allowance not authorized by NCAA legislation, the NCAA deems the student-athlete ineligible for athletic competition for that sport.²³ Further, the NCAA explicitly prohibits payments to student-athletes for “unspecified, unitemized, excessive or improper expenses.”²⁴ Another regulation provides that “[a] student-athlete may not accept money for unspecified or unitemized expenses from any organization or individual.”²⁵ However, the NCAA provides an exception for benefits received by a student-athlete, her relatives or friends even if the benefit is not authorized by NCAA legislation.²⁶ To come within this exception, the student-athlete must prove that the “same benefit generally is available to the institution’s students, their relatives or friends or to a particular segment of the student body (e.g., foreign students, minority students) determined on a basis unrelated to athletics ability.”²⁷ Stated differently, as long as the athlete is merely receiving something the rest of the student body receives, the athlete does not lose eligibility. The NCAA also bars “[p]ayment to individual team members or individual competitors for unspecified or unitemized expenses beyond *actual and necessary* travel, room and board expenses for practice and competition.”²⁸

The NCAA does not place a dollar limit on payments from agents. Instead, NCAA regulations absolutely prohibit any agent payments to athletes (i.e., even a \$1.00 payment by an agent to an athlete violates NCAA regulations). In particular, section 14.01.3.1 provides:

A student-athlete shall not be eligible for participation in an intercollegiate sport if the individual takes or has taken pay, or has accepted the promise of pay in any form, for participation in that sport, or if the individual has violated any of the other regulations related to amateurism set forth in Bylaw 12.²⁹

Moreover, the NCAA regulations then provide that “[r]eceipt by a student-athlete of nonpermissible awards, extra benefits, or excessive or

22. NCAA MANUAL, *supra* note 13, art. 16.

23. See NCAA MANUAL, *supra* note 13, § 16.01.1. If the athlete received the award or expense for use of his overall athletics skills (e.g., “superstars” competitions), the individual is ineligible in all sports. See *id.*

24. NCAA MANUAL, *supra* note 13, § 16.01.3

25. NCAA MANUAL, *supra* note 13, § 16.11.2.1

26. See NCAA MANUAL, *supra* note 13, § 16.01.2; see also *id.*, *supra* note 13, § 16.12.1.1.

27. NCAA MANUAL, *supra* note 13, § 16.01.2.

28. NCAA MANUAL, *supra* note 13, § 12.1.1.1.4.4 (emphasis added).

29. NCAA MANUAL, *supra* note 13, § 14.01.3.1.

improper expenses not authorized by NCAA legislation violates the Association's amateurism principle and renders the student-athlete ineligible for athletics participation in the sport for which the improper award, benefit or expense was received.³⁰

In some provisions, however, the NCAA does distinguish payments on the basis of the amount involved.³¹ However, these provisions do not involve athlete agents. For example, Article 13 regulates an educational institution's recruitment of prospective student-athletes.³² Section 13.2.1 prohibits an institution's staff member, or any representative of its athletics interests, from arranging for benefits to be given to a prospect or his relatives or friends, other than those payments expressly permitted pursuant to NCAA regulations.³³ The prohibition applies regardless of whether similar benefits are available to prospective students in general or their relatives and friends.³⁴

If this bylaw is violated, and the "value of the offer or inducement is \$25 or less, the eligibility of the individual (i.e., prospective or enrolled student-athlete)" is not affected, conditioned upon the individual repaying the value of the benefit to a charity of his choice.³⁵ However, the individual remains ineligible from the time the institution had knowledge of the individual's receipt of the impermissible benefit until he repays the benefit.³⁶ Specifically prohibited benefits, regardless of value, include, but are not limited to: employment arrangements for the prospect's relatives, clothing, equipment, providing or cosigning of loans for the prospect or his relatives or friends, cash and like items, tangible items including merchandise, and free or reduced-cost services, purchases or housing.³⁷ Again, payments to student-athletes that are arranged by *institutional staff members or athletics representatives*, by definition, are distinguishable from payments arranged by *athlete agents*.

B. Statutory Regulation of Agent Gifts

As one can determine from the above analysis, the NCAA concerns

30. NCAA MANUAL, *supra* note 13, § 14.01.3.2.

31. *See, e.g.*, NCAA MANUAL, *supra* note 13, § 13.2 (captioned "Offers and Inducements").

32. *See generally* NCAA MANUAL, *supra* note 13, art.13.

33. *See* NCAA MANUAL, *supra* note 13, § 13.2.1.

34. *See* NCAA MANUAL, *supra* note 13, § 13.2.1.

35. *See* NCAA MANUAL, *supra* note 13, § 13.2.1.

36. *See* NCAA MANUAL, *supra* note 13, § 13.2.1. Violations of this bylaw are deemed institutional violations, which means the college or university will be held responsible and must cooperate with any investigation. *See id.*; *see also id.* § 2.8.1. *See infra* notes 40 – 44 and accompanying text.

37. *See* NCAA MANUAL, *supra* note 13, § 13.2.2.

itself with receipt of monetary payments or other benefits by athlete agents to student-athletes.³⁸ The NCAA, however, lacks jurisdiction to enforce its rules against athlete agents.³⁹ The NCAA must enforce its rules through its university constituents. In particular, section 14.11.1 provides:

Obligation of Member Institution to Withhold Student-Athlete from Competition. If a student-athlete is ineligible under the provisions of the constitution, bylaws or other regulations of the Association, the institution shall be obligated to apply immediately the applicable rule and to withhold the student-athlete from all intercollegiate competition. The institution may appeal to the Academics/Eligibility/Compliance Cabinet for restoration of the student-athlete's eligibility . . . if it concludes that the circumstances warrant restoration.⁴⁰

As demonstrated by this regulation, although the NCAA mandates that student-athletes abide by its rules, the NCAA does not even enforce its rules *directly* against the student-athletes themselves.⁴¹ Rather, the NCAA only *indirectly* regulates student-athletes by imposing mandates on the universities (that enroll and play the student-athletes) to enforce the NCAA regulations and sanctions on its student-athletes.⁴²

The end result of the NCAA's indirect regulation of student-athletes equates, for all practical purposes, with any direct regulation that could be exerted over student-athletes. The equality manifests because the universities have every incentive to comply with the NCAA's mandates. First, to be associated with the NCAA, the member institution must agree to assist the NCAA in investigating rules violations and enforcing its rules against student-athletes.⁴³ Failure to do so may result in devastating financial consequences due to potential NCAA sanctions imposed against the university for such failure.⁴⁴

Accordingly, state and federal governments are the only entities able to authorize civil, administrative or criminal remedies and penalties against an athlete agent.⁴⁵ Currently, no federal athlete agent statute exists.

38. See *infra* Part II.A.

39. For an analysis of the various states' jurisdiction, see generally Remis and Sudia, *Escaping Athlete Agent Regulation*, *supra* note 8.

40. NCAA MANUAL, *supra* note 13, § 14.11.1.

41. See NCAA MANUAL, *supra* note 13, § 2.8; see also *supra* notes 39-40 and accompanying text.

42. See NCAA MANUAL, *supra* note 13, § 2.8; see also *supra* note 40 and accompanying text.

43. See NCAA MANUAL, *supra* note 13, §§ 1.3.2, 2.8.1.

44. See NCAA MANUAL, *supra* note 13, §§ 1.3.2, 2.8.1. For an analysis of the penalties that the NCAA may impose, depending on whether the particular misconduct constitutes a "major" or "secondary" violation see Remis, *Remedies and Penalties*, *supra* note 3, Part III.D.

45. See generally NCAA MANUAL, *supra* note 13, §§ 1.3.2, 2.8.1. This assumes of course that the agent does not belong to any other private associations or organizations, such as a state bar

Consequently, the twenty-eight athlete agent statutes serve as the only statutory vehicles specifically aimed at eliminating unethical athlete agent activity.⁴⁶ If a state is concerned about the potential financial devastation that stands in the batter's box just waiting to take a crack at inflicting itself upon the state's resident athletes and universities, an athlete agent statute is the proper vehicle to prevent any grand slam financial ruin since NCAA regulations mean nothing to an agent in terms of enforcement and punishment. Nevertheless, athlete agents should concern themselves with not violating NCAA rules solely to prevent their athlete clients (or potential clients) from losing eligibility and corresponding market value in professional drafts. Loss of market value to a student-athlete equates to loss of a percentage fee to the agent. From a penalty standpoint, however, no agent is really "scared of the NCAA Big Foot," since its jurisdictional foothold is nonexistent over athlete agents.⁴⁷

The most logical provision for a state to include in its athlete agent legislation would seem to be a provision that provides that violation of an NCAA rule constitutes a violation of the athlete agent statute. Several states included such provisions, some more inclusive than others.⁴⁸ An equally logical provision (enacted by some legislatures) deems an agent's causing of financial harm to an athlete or university as constituting a violation of the athlete agent statute.⁴⁹ These two types of statutory provisions provide some enforcement teeth, of Rottweiler proportion, to the NCAA regulations with respect to athlete agent activity.⁵⁰ Unfortunately, some states that include one or both of these two provisions feel compelled to further include other statutory provisions that serve no purpose other than strapping a muzzle on the snarling teeth of the first two provisions. The best example of such legislative monstrosity: Louisiana.

Louisiana's athlete agent statute first provides that an athlete agent violates the statute if he violates the rules of *any federation or association* (which would include the NCAA).⁵¹ Not content with this, the Louisiana

association, which regulates the agent's conduct.

46. Other statutes or common law might also regulate, without targeting specifically, athlete agent conduct. See Sudia and Remis, *Agent Solicitation*, *supra* note 5, Part II.E.8.

47. See *supra* notes 38-42 and accompanying text.

48. See Sudia and Remis, *Agent Solicitation*, *supra* note 5, Part II.C.

49. See Sudia and Remis, *Agent Solicitation*, *supra* note 5, Part II.D.

50. This analysis assumes of course that a court will not deem as being unconstitutional (i.e., due to being overbroad) a statutory provision that considers the violation of the rules of any collegiate governing body as constituting a violation of a civil or penal statute. See *supra* notes 47-48 and accompanying text.

51. See LA. REV. STAT. ANN. § 4:433; see also Sudia and Remis, *Agent Solicitation*, *supra* note 5, Part II.C. "Federation or Association" is defined as "any state or national association for the promotion and regulation of interscholastic or intercollegiate sports governing athletes and their

legislature next proceeds to allow agents to give *money (or other gifts) of any amount* provided the money or other gift was not given to “induce” the athlete into entering an agreement with the athlete agent.⁵² Further, Louisiana authorizes gifts of *money of any amount (or other items valued in excess of \$500)* provided the gifts do not cause: (1) the athlete to lose eligibility; or (2) the university to be sanctioned.⁵³

Accordingly, Louisiana authorizes athlete agents to make gifts of *things other than money (such as stocks and jewelry) valued at \$500 or less*, even if the NCAA declares the student-athlete ineligible or sanctions the university as long as the agent does not provide the gift to “induce” the student-athlete into entering an agreement.⁵⁴ Further, and even more shocking to the NCAA’s conscience, Louisiana explicitly authorizes gifts of *any amount of money* (e.g., one million dollars (\$1,000,000) or greater) as long as: (1) the NCAA (or other applicable governing federation or association) never discovers the improper payment and thus never revokes the athlete’s eligibility or imposes sanctions against the university; and (2) the gift is not made to “induce” the student-athlete into entering an agreement with the agent.⁵⁵

As noted *supra*, the NCAA bars agent gifts of any kind to student-athletes, regardless of monetary value.⁵⁶ Additionally, the NCAA maintains the same position irrespective of whether the student-athlete loses remaining intercollegiate eligibility or the university receives sanctions, economic or otherwise.⁵⁷ To the NCAA, a rules violation constitutes a rules violation, regardless of whether the student-athlete, agent and university cleverly devise a scheme to hide their misconduct from the NCAA or state officials.⁵⁸ As a practical matter, the providing of a gift by an agent to a student-athlete will normally result in the NCAA declaring the student-athlete ineligible and imposing sanctions on the university, assuming the circumstances warrant such action. Nevertheless, the NCAA rules prohibiting gifts are not contingent upon (as is the case in Louisiana) any such loss of student-athlete eligibility or imposition of university sanctions.

As a matter of statutory interpretation, the issue becomes which Louisiana statutory provision controls: (1) the statutory provision

relationships with athlete agents.” LA. REV. STAT. ANN. § 4:421(8).

52. See LA. REV. STAT. ANN. § 4:433.

53. See *id.* § 4:433(A)(1)-(2).

54. See *id.*

55. See *id.*

56. See *supra* Part II.A.

57. See *supra* Part II.A.

58. See generally NCAA MANUAL, *supra* note 13.

prohibiting violation of NCAA rules; or (2) the statutory provision explicitly authorizing conduct that the NCAA rules explicitly prohibit (e.g., providing various gifts to athletes). Obviously, the athlete agent practicing in Louisiana is placed in a no-win situation when attempting to determine her obligations under the conflicting statutory provisions. The canon of statutory construction mandating that specific provisions control over general provisions should control when interpreting Louisiana's athlete agent statute. Thus, it would appear that an athlete agent may provide gifts to an athlete as specifically authorized in the statute, even though the more general prohibition against violating the rules of any federation or association conflicts with the gift authorization provision.⁵⁹ Further, Louisiana would arguably deny athlete agents due process of law upon sanctioning the agent since the conflicting statutory provisions conceivably make the statute unconstitutionally vague; no athlete agent conducting business in Louisiana can determine from the face of the statute whether the legislature authorizes or prohibits certain conduct like the providing of various gifts to athletes.⁶⁰ This Louisiana statutory piece of work will surface again, *infra*.⁶¹

Unfortunately, any person conducting business as an athlete agent in Louisiana (or any other particular state) subjects herself to the state's jurisdiction, even if not a state resident.⁶² Thus, several issues concerning due process, minimum contacts and jurisdictional reach become extremely relevant to athlete agent legislation, an area where non-resident agents may represent athlete clients from all fifty states.⁶³

59. It can be argued that a provision explicitly prohibiting violation of the rules of any federation or association should be deemed a "specific" prohibition rather than a "general" prohibition. Nevertheless, even assuming, *arguendo*, that both provisions are "specific" rather than "general" in nature, the Louisiana provision specifying in great detail the types of gifts authorized, and the conditions under which they are permitted, is much more specific in nature than the blanket prohibition against violating the rules of "any federation or association," and the gift provision should therefore still control. LA. REV. STAT. ANN. §§ 4:422.1, 424, 433. Louisiana does not even limit the rules violations specifically to those promulgated by the NCAA or any other particular sports federation or association. *See id.*

60. *See* LA. REV. STAT. ANN. §§ 4:422.1(3), 24(7)-(8), 4:433(A)(1)-(2). *See generally* Remis and Sudia, *Escaping Athlete Agent Regulation*, *supra* note 8, Part II.A., regarding due process and the jurisdictional and constitutional defects contained within each athlete agent statute.

61. *See infra* Part II.B.1.b.iii.

62. *See generally* Remis and Sudia, *Escaping Athlete Agent Regulation*, *supra* note 8, Parts II.C.2.-3., III.A., B.

63. *See* Remis and Sudia, *Escaping Athlete Agent Regulation*, *supra* note 8, Parts II.C.2.-3., III.A., B.

1. Prohibited Gifts

Twenty-four athlete agent statutes directly regulate athlete agent gifts to athletes.⁶⁴ Indiana, Michigan, Minnesota and Ohio are the only four states with athlete agent statutes that do not contain provisions explicitly addressing athlete agent gifts to athletes.⁶⁵ A detailed reading of the statutory provisions that do regulate agent gifts to athletes reveals that such provisions categorize into three basic forms. First, some statutory provisions *absolutely prohibit* gifts. Second, some statutory provisions *conditionally prohibit* gifts. In other words, the gifts are prohibited only if certain conditions are met. Third, some gifts are prohibited only if provided to the athletes *during certain designated time frames*.

a. Absolute Prohibition

California enacted the only athlete agent statute that explicitly and absolutely prohibits any agent gifts to athletes.⁶⁶ Specifically, the California statute bars athlete agents from giving money or anything else of benefit or value to an athlete.⁶⁷ That only one state has an absolute prohibition is surprising since the NCAA absolutely prohibits agent gifts to student-athletes.⁶⁸ Nevertheless, as discussed *infra*, some of the athlete agent statutes contain conditions or prohibitions on the timing of agent gifts to athletes.⁶⁹ Some, but not all, of these various timing prohibitions seemingly amount to an absolute prohibition during the time frame with which the NCAA concerns itself.⁷⁰ As demonstrated *infra*, in these states an absolute prohibition is probably not necessary, but arguably preferred.⁷¹

Ironically, upon violation of NCAA rules, significant financial harm

64. See ALA. CODE §§ 8-26-7, -22; ARIZ. REV. STAT. ANN. §§ 15-1762, -1763; ARK. CODE ANN. § 17-16-205(4); CAL. BUS. & PROF. CODE § 18897.6; COLO. REV. STAT. ANN. § 23-16-103(1)(b); CONN. GEN. STAT. ANN. § 20-555(5); FLA. STAT. ANN. § 468.456(f); GA. CODE ANN. § 43-4A-16(b); IOWA CODE ANN. § 9A.8(A)(3); KAN. STAT. ANN. § 44-1508(b)(4); KY. REV. STAT. ANN. §§ 164.683, .684(2); LA. REV. STAT. ANN. §§ 4:424(A)(7), 433(A)(1)-(2); MD. CODE ANN. BUS. REG. § 4-421(A); MISS. CODE ANN. § 73-41-11(f)-(g); MO. ANN. STAT. § 436.212(4); NEV. REV. STAT. ANN. § 597.920(1)(d); N.C. GEN. STAT. § 78C-76(b)(4); N.D. CENT. CODE § 9-15-04(1); OKLA. STAT. ANN. tit. 70, § 821.64(7); Or. H.B. 3628 § 5; 5 PA. CONS. STAT. ANN. § 3305(2)(i), 18 PA. CONS. STAT. ANN. § 7107(a)(2); S.C. CODE ANN. § 59-102-40(4); TENN. CODE ANN. §§ 49-7-2114(a)(6), -2116(a); TEX. OCC. CODE ANN. § 2051.351(a)(6).

65. See generally IND. CODE ANN. §§ 35-46-4-1 to -4; MICH. COMP. LAWS ANN. § 750.411e; MINN. STAT. ANN. § 325E.33; OHIO REV. CODE ANN. §§ 4771.01-99.

66. See CAL. BUS. & PROF. CODE § 18897.6.

67. See *id.*

68. See *supra* Part II.A.

69. See *infra* Part II.B.1.c., regarding regulations as to the timing of agent gifts to athletes.

70. See *infra* Part II.B.1.c.

71. See *infra* Part II.B.1.c.

may befall the student-athlete and university, which is exactly the consequence that legislatures that enact athlete agent legislation attempt to avoid.⁷² Still, some athlete agent statutes allow conditional gifts to student-athletes that directly contravene NCAA rules.⁷³ Accordingly, some legislatures self-defeat their own regulatory intent by enacting legislation containing provisions that directly violate NCAA rules, when those same legislatures are attempting to prevent rules violations.⁷⁴

b. Conditional Prohibition

Eighteen of the athlete agent statutes do not mandate an absolute prohibition on agent gifts to athletes, but rather, make the prohibitions *conditional* on the *occurrence of varying events* (as opposed to conditional on the *timing* of the gift).⁷⁵ Unfortunately, these statutory conditional prohibitions on gifts to student athletes fly directly in the face of NCAA regulations.⁷⁶ As noted *supra*, the NCAA absolutely prohibits all agent gifts to student athletes, with no conditions placed on its prohibition.⁷⁷ Accordingly, these athlete agent statutes directly contradict and defeat the legislative intent behind enactment of the statutes.⁷⁸ The statutory conditions placed on the prohibition of agent gifts to athletes can be categorized into several groups, each of which are discussed separately below.

i. Inducing Contract or Employment

By far, the most frequently surfacing condition on athlete agent gifts to

72. See *supra* Part II.A. (regarding NCAA rules); see also Sudia and Remis, *Agent Solicitation*, *supra* note 5, at 209, n. 8 and accompanying text (regarding Florida's legislative declaration expressed in FLA. STAT. ANN. § 468.451).

73. See *supra* notes 51-63 and accompanying text (regarding Louisiana's authorization of certain gifts); see also *infra* Part II.B.3. (regarding many conditions under which several athlete agent statutes, including Louisiana, authorize agent gifts to athletes).

74. See *infra* Part II.B.3.; see also *supra* notes 50-60 and accompanying text, regarding Louisiana's statute.

75. See ALA. CODE §§ 8-26-7, -22; ARIZ. REV. STAT. ANN. §§ 15-1762 to -1763; ARK. CODE ANN. § 17-16-205(4); COLO. REV. STAT. ANN. § 23-16-103; FLA. STAT. ANN. § 468.456; KAN. STAT. ANN. § 44-1508; KY. REV. STAT. ANN. §§ 164.683-.684; LA. REV. STAT. ANN. §§ 4:424, -433; MD. CODE ANN. BUS. REG. § 4-421; MO. ANN. STAT. § 436.212; NEV. REV. STAT. ANN. § 597.920; N.C. GEN. STAT. § 78C-76; N.D. CENT. CODE § 9-15-04; OKLA. STAT. ANN. tit. 70, § 821.64; Or. H.B. 3628 § 5; S.C. CODE ANN. § 59-102-40; TENN. CODE ANN. §§ 49-7-2114 to -2116; TEX. OCC. CODE ANN. § 2051.351. For conditions relating to the *timing* of the gift (as opposed to the occurrence of an event), see *infra* Part II.B.1.c.

76. See generally *supra* Part II.A.

77. See *supra* Part II.A.

78. See *supra* note 72 and accompanying text.

athletes regards an agent's inducement of the athlete. In particular, all eighteen athlete agent statutes containing conditional prohibitions provide that an athlete agent cannot give anything of benefit or value "to induce" the athlete to enter a contract with the agent or accept other employment.⁷⁹ This "inducement" condition makes a mockery of the statutory prohibition on agent gifts to athletes. The only thing an agent needs to do to evade the statute is provide the athlete with a gift without inducing contract execution or employment. True, one can argue that the only reason an athlete agent would give an athlete anything of benefit or value is to induce that athlete to sign with the agent. The fallacy of this argument, however, lies with the burden of proof and superfluous language. First, as to the burden of proof, one must remember that the prosecution in a criminal case must prove the defendant agent violated the statute beyond a reasonable doubt, and the plaintiff in a civil suit must prove the case-in-chief by a preponderance of the evidence or with clear and convincing evidence.⁸⁰ In turn, the defendant does not bear the burden of proving that he did not violate the athlete agent statutes, in either a civil or criminal action. Part of the case-in-chief, whether civil or criminal in nature, includes proving that the defendant provided the gift "to induce" the athlete to enter a contract or employment.⁸¹

One can safely assume that most athlete agents will not admit in a deposition or in court that the reason for his gift was to illegally induce the athlete. In fact, there could be valid reasons why an agent would provide a gift to an athlete other than inducing the athlete to enter a contract or employment. A clever athlete agent, with entrepreneurial marketing skills, could provide several low profile players on the team with gifts without ever intending to induce them into a contract. Instead, the agent's real motivation could be to make one or several non-stars so happy that they do nothing other than praise the athlete agent to other athletes, including the star athletes. The star athletes in turn might seek the agent's advice after hearing many teammates speak so highly of him. Technically, this activity

79. ALA. CODE § 8-26-7; ARIZ. REV. STAT. ANN. § 15-1762; ARK. CODE ANN. § 17-16-205(4); COLO. REV. STAT. ANN. § 23-16-103; FLA. STAT. ANN. § 468.456; KAN. STAT. ANN. § 44-1508; KY. REV. STAT. ANN. § 164.683; LA. REV. STAT. ANN. §§ 4:424, 433; MD. CODE ANN. BUS. REG. § 4-421; MO. ANN. STAT. § 436.212; NEV. REV. STAT. ANN. § 597.920; N.C. GEN. STAT. § 78C-76; N.D. CENT. CODE § 9-15-04; OKLA. STAT. ANN. tit. 70, § 821.64; Or. H.B. 3628 § 5; S.C. CODE ANN. § 59-102-40; TENN. CODE ANN. §§ 49-7-2114, -2116; TEX. OCC. CODE ANN. § 2051.351.

80. As to which states provide that violations of the athlete agent statutes constitute a misdemeanor or felony, or merely provide a civil cause of action (or both), see generally Remis, *Remedies and Penalties*, *supra* note 3.

81. See *supra* note 80 and accompanying text.

would not violate many of the athlete agent statutes since the agent is not paying (or providing other gifts to) an athlete to induce that athlete to execute a contract.⁸²

As discussed *infra*, some athlete agent statutes prohibit payments to persons other than the athlete to induce the athlete to execute a contract.⁸³ However, none of the statutes specifically include *other players on the same team* as prohibited recipients.⁸⁴ Only certain states could arguably include *other players on the same team* (assuming these players are not related to the athlete in question). First, Oregon and Tennessee prohibit payments to anyone acting for or on behalf of the athlete.⁸⁵ Second, seven states explicitly prohibit payments to “any person” to induce the athlete to execute a contract.⁸⁶ Third, eight other states arguably (but not explicitly) prohibit payments to “any person,” although these states are quite vague on the issue.⁸⁷ The statutory vagueness arises since the statutes merely state that an agent may not offer anything to induce an athlete *without specifying to whom* the offer cannot be made.⁸⁸ In other words, it is unclear in these states whether the prohibition against gifts applies only to the “athlete” or to “any person.” Outside these states, an agent can share the wonderful spirit of Christmas by playing Santa all year round to a star athlete’s teammates.

California and Oregon further provide that an agent *may continue contact if initiated by*, among several other enumerated individuals, *any person residing in the same place as the athlete*.⁸⁹ However, these two states do not include such persons as one of the enumerated individuals to whom an agent may not provide gifts.⁹⁰ In other words, if an athlete’s teammate lives in the same dorm, or even the same room, as an athlete, several events may transpire in California and Oregon. First, that

82. See *supra* note 79 and accompanying text.

83. See *infra* Part II.B.2.

84. See *infra* Part II.B.2.

85. See Or. H.B. 3628 § 5; TENN. CODE ANN. §§ 49-7-2114(a)(6), -2116(a).

86. ALA. CODE § 8-26-7; ARIZ. REV. STAT. ANN. § 15-1762; ARK. CODE ANN. § 17-16-205; FLA. STAT. ANN. § 468.456(f); KY. REV. STAT. ANN. § 164.683; NEV. REV. STAT. ANN. § 597.920(1)(d); TENN. CODE ANN. §§ 49-7-2114(a)(6), -2116(a).

87. See KAN. STAT. ANN. § 44-1508(b)(4); MD. CODE ANN. BUS. REG. § 4-421(A); MO. ANN. STAT. § 436.212(4); N.C. GEN. STAT. § 78C-76(b)(4); N.D. CENT. CODE § 9-15-04(1); OKLA. STAT. ANN. tit. 70, § 821.64(7); S.C. CODE ANN. § 59-102-40(4); TEX. OCC. CODE ANN. § 2051.351(a)(6).

88. See KAN. STAT. ANN. § 44-1508(b)(4); MD. CODE ANN. BUS. REG. § 4-421(A); MO. ANN. STAT. § 436.212(4); N.C. GEN. STAT. § 78C-76(b)(4); N.D. CENT. CODE § 9-15-04(1); OKLA. STAT. ANN. tit. 70, § 821.64(7); S.C. CODE ANN. § 59-102-40(4); TEX. OCC. CODE ANN. § 2051.351(a)(6).

89. See CAL. BUS. & PROF. CODE § 18897.6(3)(a), (c); Or. H.B. 3628 § 6; see also Sudia and Remis, *Athlete Solicitation*, *supra* note 5, Part II.E.3.

90. See CAL. BUS. & PROF. CODE § 18897.6; Or. H.B. 3628 § 5.

teammate can initiate contact with the athlete agent on behalf of the athlete. Second, the agent can continue the contact, or make new contacts, after that initial contact is established. Third, the agent may respond to the teammate's "letter to Santa" by bringing him all kinds of goodies. Better yet, there need not even be a letter needing a response. The agent can simply bring the teammate all the toys he wants since teammates are not enumerated as individuals to whom an agent cannot provide gifts. Yes, one can easily tell it's that wonderful time of the year.

Although this scenario might seem far-fetched, agents have notoriously provided numerous gifts to several players on a team, sometimes worth tens of thousands of dollars. The Florida State University Footlocker scandal and the purported agent activities of Norby Walters and Lloyd Bloom illustrate this reality.⁹¹ Further, and not ironically, some coaches have the same love for money as athlete agents and teammates. Therefore, an athlete agent might realistically provide gifts to the athlete's coaches in hopes they will talk highly about the agent to their players, even if not technically "to induce" the athlete into signing a contract.⁹²

True, the above discussion regarding agent gifts to teammates and coaches fails to account for the fact that some athlete agent statutes have other statutory provisions that prohibit payments to certain persons in return for athlete referrals.⁹³ Nevertheless, the above analysis remains virtually unaffected by these provisions. First, not every athlete agent statute has such provisions. Second, these provisions usually refer to "coaches" and other "employees" of educational institutions.⁹⁴ Consequently, unless the athlete's teammate holds a part-time job at the university, the teammate may provide referrals for money under some of the statutes since he is not a "coach" or "employee" of the university.⁹⁵ Iowa, though, restricts payments for referrals from other students, which would obviously include an athlete's teammates.⁹⁶

Third, the term "referral" is not defined in all of the athlete agent

91. See Remis, *Remedies and Penalties*, *supra* note 3, Part III.A. (citations omitted).

92. A review of the twenty-eight statutes indicates the veracity of this concern. See *infra* Part II.B.2.

93. Some legislatures enacted provisions prohibiting agent payments to coaches and other university personnel in return for athlete referrals. See, e.g., MO. ANN STAT. § 436.212(3) (prohibiting payments to coaches or other university employees in return for athlete referrals.).

94. See, e.g., MO. ANN STAT. § 436.212(3).

95. The NCAA places severe restrictions on a student athlete's ability to work part-time jobs. See generally *supra* Part II.A.

96. See IOWA CODE ANN. § 9A.8(5); see also *supra* notes 85-91 and accompanying text for other statutory provisions that might prohibit gifts to teammates.

statutes, so it is unclear whether violation of the "referral" prohibition requires the employee to merely provide an athlete's name or address or whether it requires the athlete to actually sign an agent contract with the athlete agent. In other words, "referrals" does not necessarily mean the same thing as "inducements," another undefined term in the statutes. Stated another way, if an athlete agent already knows about the athlete when he approaches the coach or employee and provides him with a gift, a "referral" might not have technically been made at all. Instead, as noted *supra*, the athlete agent might simply be marketing his reputation so that many people speak highly of him around other star players.⁹⁷

Finally, there still exists the burden of proof problem previously discussed.⁹⁸ A teammate, coach or employee might testify in court that he thought the agent gave him a gift to induce yet another athlete to enter a contract. However, such person's "thoughts" as to what transpired in the "agent's mind" at the time of the gift constitutes objectionable speculative testimony, and at most, serves as only one factor in the case-in-chief of the state or civil plaintiff. Further, if the coach, teammate or employee offers the testimony in exchange for prosecutorial leniency with the state or NCAA, then the testimony becomes tainted and weakened premised upon bias and motive.

Accordingly, it seems legislatively wise to strike the inducement condition from the statutory prohibition and merely prohibit all gifts to athlete agents. Then, the agent's subjective state of mind is irrelevant, at least on the "inducement" issue, and the prosecution or plaintiff's burden of proof lessens significantly.⁹⁹ In California, as with the NCAA, the only inquiry becomes whether the athlete agent provided money or anything else of benefit or value to an athlete or other designated individual.¹⁰⁰ Such provisions make for cleaner enforcement, and hopefully, more frequent and strict compliance by agents thereby obliterating the need for enforcement. Moreover, an athlete agent operating in California can easily determine from the athlete agent statute that it prohibits all agent gifts to athletes, exactly as the NCAA prohibits. No conditional hurdles can tempt the agent into violating the statute, thinking the entire time that he has a good defense (i.e., burden of proof problems surrounding his subjective

97. See generally *supra* Part II.B.1.b.i.

98. See *supra* Part II.B.1.b.i.

99. The agent's subjective intent might not be completely irrelevant if the athlete agent statute requires an agent to "knowingly" or "intentionally" violate a statute. See *Remis, Remedies and Penalties*, *supra* note 3, Part III.C.4. and Appendix D, for a detailed analysis of general intent, specific intent and strict liability crimes in the context of athlete agent statutes.

100. See *supra* notes 66-68 and accompanying text.

state of mind) to any civil or criminal suit surrounding the gift.¹⁰¹

The Oklahoma athlete agent statute goes one step further than the other seventeen states in its conditional prohibition.¹⁰² In Oklahoma, simply providing gifts to an athlete to induce a contract is permissible. Instead, the statutory conditional prohibition only kicks in if two conditions are met: (1) the agent makes the gift "to induce" the execution of a contract, and (2) the athlete never before signed a contract of employment with a professional sports team.¹⁰³ In most cases, this second requirement is meaningless since the NCAA and most legislatures are concerned with "student athletes."¹⁰⁴

Nevertheless, in the event a student-athlete signs with a professional team in one sport, that student-athlete does not necessarily lose all intercollegiate eligibility under NCAA rules.¹⁰⁵ Under NCAA rules, a student-athlete is permitted to turn professional in one sport while competing in NCAA competitions in another sport.¹⁰⁶ Oklahoma's athlete agent statute appears to contradict NCAA regulations on this issue. Regardless of this oddity, Oklahoma would be better served by having an absolute prohibition against all agent gifts.¹⁰⁷ That way, an athlete agent cannot provide a gift to an athlete if the NCAA deems that athlete an eligible amateur student-athlete. As Oklahoma's statute currently stands, an athlete agent can provide gifts to an amateur football player (who is a professional basketball player) even though the NCAA rules prohibit such gifts and the athlete will lose remaining football eligibility upon acceptance of the gifts.

ii. Inducing Plus Timing

The Tennessee athlete agent statute also goes beyond the other seventeen states discussed above in its conditional prohibition.¹⁰⁸ Not only

101. See *supra* Part II.B.1.b.i.

102. See OKLA. STAT. ANN. tit. 70, § 821.64(7); see also *supra* note 75 and accompanying text (regarding the eighteen states with conditional prohibitions on gifts).

103. OKLA. STAT. ANN. tit. 70, § 821.64(7).

104. Even though most legislatures primarily concern themselves with only regulating agent conduct that involves "student-athletes," the legislatures often fail to draft athlete agent statutes in a fashion that limits regulation only to student-athletes. An issue arises as to whether particular athlete agent statutes reach agent contact with athletes other than "student-athletes." See generally Remis and Sudia, *Escaping Athlete Agent Regulation*, *supra* note 8; see also *supra* note 16 and accompanying text.

105. See NCAA MANUAL, *supra* note 13, § 12.1.2.

106. See NCAA MANUAL, *supra* note 13, § 12.1.2.

107. See *supra* Part II.B.1.a.

108. See TENN. CODE ANN. § 49-7-2116(a); see also *supra* notes 75 and 102 and accompanying text (regarding the eighteen states with conditional prohibitions on gifts).

does Tennessee require that the agent make the gift “to induce” an athlete to execute a contract before the statutory prohibition applies, Tennessee also requires the payment to be made “during eligibility.”¹⁰⁹ Further, the Tennessee statute inserts a subjective intent requirement (“knowingly”) for the athlete agent to violate the statute.¹¹⁰ Unfortunately, it is unclear from reading the statute whether the athlete agent must simply “knowingly make the gift” or whether the agent must “knowingly make the gift while ‘knowing’ that the gift is being made during the athlete’s period of eligibility.”¹¹¹ The analysis of general intent, specific intent and strict liability crimes is quite complex and beyond the scope of this article.¹¹²

iii. Causing Loss of Eligibility/University Sanctions

Arizona puts a further twist on the conditional prohibition provisions.¹¹³ In Arizona, the conditional prohibition on gifts does not activate itself unless the gift would cause an athlete to lose eligibility.¹¹⁴ This statutory prohibition appears to comport with NCAA rules since the provision, stated differently, means that as long as the athlete does not violate the NCAA eligibility rules, the conduct is permitted.¹¹⁵ Thus, Arizona’s provision is much more preferable than the language chosen by Louisiana. In Louisiana, the agent violates the athlete agent statute only if the gift *actually causes* (as opposed to Arizona’s *would cause*) a loss of eligibility.¹¹⁶ As demonstrated below, this statutory difference makes a world of difference as far as logic is concerned.

Simply stated, Louisiana encourages an athlete agent to compound any unethical behavior that he may have already committed.¹¹⁷ If an athlete agent provides a gift to a student-athlete, the agent is discouraged from notifying any public official of his purported misconduct. The discouragement results from the fact that if the university then notifies the NCAA, which in turn declares the student-athlete ineligible, the athlete

109. TENN. CODE ANN. § 49-7-2116(a).

110. *Id.*

111. *See generally id.*

112. *See Remis, Remedies and Penalties, supra* note 3, Part III.C.4.a.iii. and Appendix D, for a detailed analysis of general intent, specific intent and strict liability crimes in the context of athlete agent statutes; *see also supra* note 99 and accompanying text.

113. *See* ARIZ. REV. STAT. ANN. § 15-1762(A)(3).

114. *See id.*

115. *See generally id.*

116. *See* LA. REV. STAT. ANN. § 4:433(A)(1); ARIZ. REV. STAT. ANN. § 15-1762(A)(3).

117. This analysis assumes that the providing of gifts to an athlete is indeed “unethical.” For a contrary argument, *see Remis, Remedies and Penalties, supra* note 3, Part III.

agent at that point in time violates the statute.¹¹⁸ Until the NCAA declares the student-athlete ineligible (even though he is already deemed ineligible under NCAA rules), a Louisiana athlete agent can legally give the student-athlete as many gifts as his reindeer and sleigh will carry.¹¹⁹ Thus, if an athlete agent provides gifts to student-athletes, as long as he is sneaky enough to cover his tracks and the student-athletes do not squeal on him, the agent will not violate the Louisiana statute.¹²⁰ To assist the agent's secrecy, a student-athlete will not likely squeal since he is receiving gifts and will lose further eligibility under NCAA rules if caught.¹²¹

Completely barring agent gifts to athletes might not prevent some athlete agents from providing them, but at least it takes away any loopholes and corresponding incentive for an athlete agent to provide gifts in violation of NCAA rules. If the agent knows he can be prosecuted for providing gifts, even if no eligibility is lost, then he arguably will be more inclined to not provide the gifts under any circumstances. Knowing that he can provide gifts to athletes as long as the NCAA does not find out and declare the athlete ineligible, the Louisiana agent arguably might be more inclined to take a risk and provide the gifts.

It is realized that athlete agents might not be deterred by any particular law, especially if the state does not have the resources to prosecute agents as today's courts are backlogged with jury trials of defendants committing far more heinous crimes than providing a "happy meal" to a student-athlete.¹²² In fact, this alone makes one wonder why the NCAA (and twenty-eight states) show so much concern over agent conduct. Nonetheless, even if a particular athlete agent is not persuaded or dissuaded by either type of provision (i.e., absolute or conditional bar), the inherent problem with Louisiana's provision, as it stands, is that it *initially authorizes agent conduct but subsequently imposes punishment* on the agent *if* certain statutorily-designated events transpire.¹²³ Expressed

118. The athlete actually becomes ineligible *upon receipt* of the gift without any further declaration by the NCAA. See NCAA MANUAL, *supra* note 13, § 16.01.1. In fact, as discussed in Part II.A., *supra*, an individual can lose eligibility long before entering college. See NCAA MANUAL, *supra* note 13, § 12.01.3. As a practical matter, however, the NCAA needs to find out about the gift for anything to be officially done about the athlete's ineligibility (i.e., declared ineligible and prohibited from further play).

119. See *supra* note 118 and accompanying text.

120. See generally LA. REV. STAT. ANN. § 4:433.

121. See *supra* Part II.A.

122. Remember, it is irrelevant whether the "happy meal" went to a *student-athlete* (which under NCAA regulations means a college athlete only) or whether it merely went to an *individual* (which under NCAA regulations includes elementary and high school athletes as well as college athletes). See *supra* note 16 and accompanying text.

123. See LA. REV. STAT. ANN. § 4:433.

another way, an agent gift is permissible in Louisiana unless, *with hindsight*, the state subsequently determines that the NCAA eventually discovered the gift and declared the athlete ineligible.¹²⁴ At this point in time (i.e., the precise moment the athlete is declared ineligible), a gift previously and explicitly authorized by statute suddenly becomes illegal.¹²⁵ This could mean that an agent does not violate the athlete agent statute until years after the gift transferred hands.

Arguments certainly exist so that no person feels sorry for the athlete agent for receiving punishment for his "previously legal" happy meal gift "spoiling to illegal status" years later.¹²⁶ First, the agent knows when giving the gift that Louisiana conditions the authorization for his conduct upon the student-athlete maintaining eligibility, and that if the eligibility is later revoked, the agent may subsequently be punished. The Louisiana statute squarely places the agent on notice of this fact.¹²⁷ This is not the equivalent of an unconstitutional *ex post facto* law enacted years after the defendant's conduct occurs.

Second, many laws are based upon consequences that transpire after the fact. Our entire system of negligence and damages imposes more severe consequences on a defendant if the accident victim is severely injured rather than slightly injured. In fact, a tortfeasor may even assume responsibility for a physician's acts of medical malpractice occurring well after, and entirely independent of, the tortfeasor's original misconduct. Even our criminal laws predicate themselves upon changing events, such as a charge of aggravated battery turning to murder if the victim dies days or even years later.

The fallacy with these analogies is that in both (tortfeasor and criminal defendant alike) the defendant did something wrong *at the time he acted*. Negligently running someone over in a vehicle constitutes a tort; similarly, shooting someone constitutes a felony. The only fact that changes in each scenario, as far as the defendant is concerned, is the severity of injury and, consequently, the severity of his punishment for the original wrongdoing. If the defendant was not negligent in running over the victim, or only shot the victim by accident or in self-defense, he cannot be sued civilly or charged with aggravated battery, respectively.

In the athlete agent's case, Louisiana explicitly authorizes the agent to engage in certain conduct, but then provides that that same conduct might suddenly become illegal when the agent turns his back and is not

124. *See id.*

125. *See id.*

126. *See supra* note 122 and accompanying text.

127. *See* LA. REV. STAT. ANN. § 4:433(A)(1), (C).

looking.¹²⁸ Life would be much simpler in states like Louisiana if the state simply did not authorize an agent to provide gifts to athletes under any circumstances. The NCAA adopted this wise protective measure and the states should approach the situation the same.¹²⁹ As noted, California adopted this same approach.¹³⁰

Louisiana's current law equates to telling a person that he may rob a bank as long as the police do not catch him. In contrast, most laws state that persons may not rob banks – ever. Our laws do not provide that it is generally permissible to rob a bank, but if the robber is caught, it then becomes a felony. If Louisiana desires to increase the punishment of an athlete agent for financial harm caused by loss of eligibility, it may easily do so. In fact, Louisiana's penalty provision in the athlete agent statute does just that.¹³¹ Louisiana provides that an agent's violation of the athlete agent statute is a criminal offense, subjecting the agent to fines, imprisonment or both.¹³² In fact, Louisiana and other states such as Arizona, provide for a civil cause of action to enable a university to recover from the agent the revenue lost due to the agent's misconduct.¹³³ Considering the severe financial havoc that can be thrust upon a student-athlete or university due to an athlete agent's misconduct (i.e., millions of dollars in lost revenue), Louisiana and Arizona find sound justification to support their penalty and damages provisions.¹³⁴ Louisiana should not, however, tie the initial permissibility of an agent's actions to events that transpire, or more appropriately, turn sour, after-the-fact.

In actuality, Louisiana conditions prohibitions on gifts by requiring the occurrence of either of two events.¹³⁵ First, an athlete agent may provide gifts to a student-athlete as long as the student-athlete is not caught by the NCAA and then declared ineligible.¹³⁶ Second, Louisiana prohibits gifts even if the student-athlete is not declared ineligible, as long as the university is sanctioned.¹³⁷ The same analysis set forth above with respect to Louisiana's provision regarding loss of eligibility, applies with equal force and effect to Louisiana's hindsight prohibitory jab on an agent's

128. *See id.* § 4:433.

129. *See supra* Part II.A.

130. *See supra* notes 66-68 and accompanying text.

131. *See* LA. REV. STAT. ANN. § 4:426(A).

132. *See id.* § 4:426(C)(2).

133. *See id.* § 4:432; ARIZ. REV. STAT. ANN. § 15-1765.

134. *See* LA. REV. STAT. ANN. § 4:432; ARIZ. REV. STAT. ANN. § 15-1765; *see also* Remis, *Remedies and Penalties*, *supra* note 3, Parts II.B., III.D.

135. *See* LA. REV. STAT. ANN. § 4:423.

136. *See id.* § 4:423(A)(1).

137. *See id.* § 4:423(A)(2).

conduct once the NCAA imposes sanctions on a university long after the agent's conduct occurred.¹³⁸

c. Prohibition on Timing

Seven athlete agent statutes prohibit agent gifts to athletes only if the gifts occur within certain statutorily designated time frames.¹³⁹ Tennessee, as noted *supra*, requires that the agent make the gift *to induce* an athlete to execute a contract.¹⁴⁰ Tennessee also requires that the gift be made *during* the athlete's period of eligibility.¹⁴¹

Four other states similarly condition the gift prohibition on an athlete's eligibility: Connecticut, Iowa, Mississippi and Pennsylvania.¹⁴² Connecticut and Pennsylvania prohibit agent gifts only if they occur *before the athlete's intercollegiate eligibility expires*.¹⁴³ Iowa and Mississippi prohibit an agent from providing any gifts until *after the athlete's last intercollegiate contest occurs*, including any post season contests.¹⁴⁴ Although utilizing different statutory language, all five states accomplish the same goal: *prohibiting athlete agent gifts to a student-athlete while the student-athlete still possesses remaining intercollegiate eligibility*.

Theoretically, under NCAA rules, even an infant born somewhere in the country one second ago possesses intercollegiate eligibility (albeit in the future). This scenario assumes, of course, that the infant has not signed with an overly aggressive agent between cries and naps. Accordingly, Tennessee's prohibition on gifts made *during* eligibility equates with the prohibition contained in Connecticut and Pennsylvania on gifts made *before expiration* of eligibility. In other words, from the second a person is born, until the time he or she violates NCAA rules and loses eligibility, the person is walking around Earth *during* (and therefore *before expiration of*) intercollegiate eligibility.¹⁴⁵ The only difference lies

138. See *supra* notes 116-34 and accompanying text.

139. See ARIZ. REV. STAT. ANN. §§ 15-1762(3), -1763(D); CONN. GEN. STAT. ANN. § 20-555(5); GA. CODE ANN. § 43-4A-16(b); IOWA CODE ANN. § 9A.8(A)(3); MISS. CODE ANN. § 73-41-11(g); 5 PA. CONS. STAT. ANN. § 3305(2), 18 PA. CONS. STAT. ANN. § 7107(a)(2); TENN. CODE ANN. § 49-7-2116(a).

140. See TENN. CODE ANN. §§ 49-7-2114(a)(6), -2116(a); see also *supra* Part II.B.1.b.ii.

141. See TENN. CODE ANN. § 49-7-2116(a).

142. See CONN. GEN. STAT. ANN. § 20-555(5); IOWA CODE ANN. § 9A.8(A)(3); MISS. CODE ANN. § 73-41-11(g); 5 PA. CONS. STAT. ANN. § 3305(2), 18 PA. CONS. STAT. ANN. § 7107(a)(2).

143. See CONN. GEN. STAT. ANN. § 20-555(5); 5 PA. CONS. STAT. ANN. § 3305(2), 18 PA. CONS. STAT. ANN. § 7107(a)(2).

144. See IOWA CODE ANN. § 9A.8(A)(3); MISS. CODE ANN. § 73-41-11(g).

145. See *supra* Part II.A.

in whether the eligibility is current or in the future.¹⁴⁶ The requirement found in Iowa and Mississippi that the gift occur *after the last intercollegiate contest* similarly equates with the Connecticut, Pennsylvania and Tennessee prohibitions since most athletes' eligibility expires, hopefully, after their last intercollegiate contest. Most importantly, all five states – at least with respect to this timing issue – comport with NCAA regulations. The NCAA regulates agent gifts (by prohibiting them completely) to student-athletes with intercollegiate eligibility remaining. The NCAA does not regulate professional athletes or other athletes without eligibility remaining.

Some technical variances do exist, however, amongst these four provisions that result in major differences. First, Tennessee permits gifts even *during* eligibility as long as the agent does not make the gift “to induce” an athlete to execute a contract.¹⁴⁷ Tennessee’s provision directly contravenes NCAA rules that establish an absolute prohibition on gifts.¹⁴⁸ Although Tennessee appears concerned with protecting an athlete’s eligibility because it only prohibits gifts *during* this period, it fails to achieve its objective because it further requires agent “inducement.” If the “inducement to contract” does not exist (or at least is not proven by the prosecution or plaintiff), the agent does not violate the statute by giving athletes gifts.¹⁴⁹ This proposition is true even though the NCAA will revoke the student-athlete’s remaining eligibility upon receipt of the gift.¹⁵⁰ In contrast, Connecticut, Iowa, Mississippi and Pennsylvania do not contain this additional “inducement” condition.¹⁵¹ Instead, the only condition that modifies the prohibition in these four states deals specifically with the timing of the gift in relation to the athlete’s eligibility.¹⁵²

Second, the time frames established by Connecticut and Pennsylvania versus Iowa and Mississippi, although usually accomplishing the same objective, could differ depending on the circumstances. Each statute could achieve different results whenever an ineligible student-athlete still competes in an intercollegiate contest. For example, if one agent provides

146. See *supra* Part II.A.

147. See TENN. CODE ANN. § 49-7-2116(a); see also *supra* Part II.B.1.b.ii.

148. See TENN. CODE ANN. § 49-7-2116(a).

149. See *id.*; see also *supra* notes 80-81 and accompanying text, regarding burden of proof obstacles.

150. See *supra* Part II.A.

151. See generally CONN. GEN. STAT. ANN. § 20-555; IOWA CODE ANN. § 9A.8; MISS. CODE ANN. § 73-41-11; 5 PA. CONS. STAT. ANN. § 3305, 18 PA. CONS. STAT. ANN. § 7107.

152. See CONN. GEN. STAT. ANN. § 20-555(5); IOWA CODE ANN. § 9A.8(A)(3); MISS. CODE ANN. § 73-41-11(a); 5 PA. CONS. STAT. ANN. § 3305(2), 18 PA. CONS. STAT. ANN. § 7107(a)(2).

a student-athlete with a gift, under NCAA rules that student-athlete is immediately ineligible for further competition and the university can be sanctioned for playing him further.¹⁵³ Nevertheless, as is often the case, the NCAA-prohibited gift might go undetected and the student-athlete might still play even though he knows he is not allowed. As long as the student-athlete and agent do not notify anyone of the gift, and they have every incentive not to since the student-athlete will lose eligibility under NCAA rules, the timing of the *expiration of the student-athlete's eligibility* and the *last intercollegiate contest* might become out of sync.

Accordingly, when a second agent (or even the same agent) proceeds to provide a second gift to the student-athlete (after the student-athlete already accepted the first gift but before he secretly plays his last contest in violation of NCAA rules), the second agent violates Iowa and Mississippi law but complies with the law in Connecticut, Pennsylvania and Tennessee.¹⁵⁴ The second agent achieves this odd result because the gift arrives after the expiration of eligibility (which was lost after the first gift) and therefore the athlete agent statutes of Connecticut and Pennsylvania allow the gift.¹⁵⁵ Connecticut and Pennsylvania permit the gift since they only prohibit gifts made *before* eligibility expires, not after.¹⁵⁶ Tennessee similarly prohibits gifts *during* the student-athlete's period of eligibility, not after expiration thereof.¹⁵⁷ In contrast, the second gift is given before the student-athlete secretly plays his last game in violation of NCAA rules. Since the gift came *before* the last intercollegiate contest (even though the last contest should not have been played by the ineligible student-athlete), the second agent violates Iowa and Mississippi law since they only permit gifts made *after* the last intercollegiate contest (even though the student-athlete was already ineligible).¹⁵⁸

It must be borne in mind, however, that an athlete agent is only subject to the laws of the jurisdictions in which he maintains sufficient minimum contacts so as to not offend traditional due process principles.¹⁵⁹ However, the type of conduct sufficient to constitute minimum contacts is an open

153. See *supra* Part II.A.

154. See CONN. GEN. STAT. ANN. § 20-555(5); IOWA CODE ANN. § 9A.8(A)(3); MISS. CODE ANN. § 73-41-11(g); 5 PA. CONS. STAT. ANN. § 3305(A)(2), 18 PA. CONS. STAT. ANN. § 7107(a)(2); TENN. CODE ANN. § 49-7-2116(a).

155. See CONN. GEN. STAT. ANN. § 20-555(5); 5 PA. CONS. STAT. ANN. § 3305(A)(2), 18 PA. CONS. STAT. ANN. § 7107(a)(2).

156. See CONN. GEN. STAT. ANN. § 20-555(5); 5 PA. CONS. STAT. ANN. § 3305(A)(2), 18 PA. CONS. STAT. ANN. § 7107(a)(2).

157. See TENN. CODE ANN. § 49-7-2116(a).

158. See IOWA CODE ANN. § 9A.8(A)(3); MISS. CODE ANN. § 73-41-11(g).

159. See generally Remis and Sudia, *Escaping Athlete Agent Regulation*, *supra* note 8, regarding the jurisdictional requirements and constitutional flaws of the various athlete agent statutes.

and complicated jurisdictional issue.¹⁶⁰

One final type of timing prohibition occurs in two states, Arizona and Georgia.¹⁶¹ In these two states, an athlete agent cannot provide gifts to athletes *before* the athlete signs an agent contract.¹⁶² This type of statutory prohibition accomplishes two primary goals for the legislature. First, the prohibition tends to protect student-athletes who have eligibility remaining because if they have not yet signed with an athlete agent, chances are the student-athletes still have eligibility remaining. Second, the prohibition also discourages agents from “inducing” a student-athlete into signing an agent contract based solely on a gift from the agent.

The problem, though, with the statutory prohibition accomplishing its first objective is that even if a student-athlete has not yet signed with an agent, he might already be ineligible through receipt of a prior gift from another agent.¹⁶³ Accordingly, the statute potentially prohibits gifts to athletes with whom even the NCAA is not concerned. Stated another way, the statutory prohibition might serve to protect an athlete who does not need protection since there would be no eligibility to lose and no sanctions for the NCAA to impose on the university. If the university plays the student-athlete after the signing, the NCAA would likely have imposed the sanctions anyway because the university would have played a student-athlete who had already lost eligibility (through receipt of the prior gift).¹⁶⁴ Once a university plays an ineligible student-athlete, the damage is already done. The signing of an ineligible student-athlete does not cause loss of eligibility or university sanctions. Instead, the receipt of the prior gift by the student-athlete while still eligible (and the university decision to play the student-athlete after receiving the gift) causes these consequences. The flaws in reaching the second objective (avoiding “inducements”) have already been discussed in great detail herein.¹⁶⁵

d. Prohibition on Value

Now the attention turns to the most ridiculous statutory conditional

160. See Remis and Sudia, *Escaping Athlete Agent Regulation*, *supra* note 8.

161. See ARIZ. REV. STAT. ANN. § 15-1763; GA. CODE ANN. § 43-4A-16.

162. See ARIZ. REV. STAT. ANN. § 15-1763(D); GA. CODE ANN. § 43-4A-16(b).

163. See *supra* note 118 regarding an athlete losing NCAA eligibility *upon receipt* of a gift rather than through formal NCAA *declaration* of ineligibility.

164. Of course, this assumes that the NCAA decides sanctions are warranted against the university after investigating the university's conduct or involvement in the rule violation. See NCAA MANUAL, *supra* note 13, §19.01 for the NCAA's enforcement scheme for rule violations. Even if the university had no knowledge of the gifts, the university can be required to forfeit a previously won game due to the university playing the ineligible player. See *generally id.*

165. See *supra* Parts II.B.1.b.i., iii.

prohibition on agent gifts of all, that contained in the athlete agent legislation of the State of Louisiana.¹⁶⁶ Yes, indeed. If there was ever an Olympic medal awarded for enacting an athlete agent statute to protect NCAA-eligible athletes and institutions for which they play, and miserably failing at this objective, Louisiana would win the gold, silver *and* bronze for each of its three major statutory mistakes.

As noted *supra*, the first mistake contained within Louisiana's prohibition on agent gifts is that it conditions the gift prohibition on the athlete losing eligibility or the university being sanctioned.¹⁶⁷ In other words, the agent gift is legislatively permissible until the state determines, at a later date, possibly years later, that the athlete lost eligibility or her university was sanctioned as a result of the gift. At that moment in time, the previously legal gift suddenly becomes illegal. This article previously analyzed, in relation to Louisiana's statute, the fallacy of utilizing hindsight to retroactively make illegal conduct that the legislature explicitly authorized previously.¹⁶⁸

Louisiana's second statute-brewing mistake emerges in the requirement that the "loss of eligibility" and "university sanction" conditions activate themselves only if the item of benefit or value (other than money) provided to the athlete exceeds \$500.¹⁶⁹ Accordingly, a gift of \$500 or less is permissible even if the athlete loses eligibility or the university is sanctioned.¹⁷⁰ Considering the financial harm that can be wrought upon an athlete or university (e.g., a university forfeiting to the NCAA a multi-million dollar bowl payout as a result of playing an ineligible athlete) for merely accepting a gift valued at a few dollars, Louisiana's provision makes no conceivable sense.¹⁷¹

Further, Louisiana fumbles for the third time for even providing that items of value over \$500 are ever permissible. This encourages the agent to be very secretive about the gift so that he does not get caught. As long as the student-athlete does not lose eligibility and the university is not sanctioned as a result of the gift, the agent is off the statutory hook.¹⁷² In essence, this implicitly authorizes the athlete agent to provide many gifts to student-athletes as long as the NCAA never discovers them. This implicit reading of Louisiana's statute derives from the fact that if the

166. See LA. REV. STAT. ANN. § 4:433.

167. See *id.* § 4:433A)(1)-(2).

168. See *supra* Part II.B.1.b.iii.

169. See LA. REV. STAT. ANN. § 4:433.

170. See *id.*

171. See Remis, *Remedies and Penalties*, *supra* note 3, Parts III.D.- E.

172. See LA. REV. STAT. ANN. § 4:433(A).

NCAA did find out about the gifts, loss of the student-athlete's eligibility or university sanctions would likely follow in the face of the student-athlete's blatant violation of NCAA rules, which absolutely (not conditionally) bar agent gifts to student-athletes.¹⁷³

Louisiana's fourth "honorable mention" (there is no award given after bronze) blunder is that the only monetary limit (as wrong as it is) applies solely to items of benefit or value other than gifts of money.¹⁷⁴ Thus, gifts of money have no limit at all. Money and other items of benefit or value should not be without limits or even limited to \$500. Instead, there should be an absolute prohibition on any gifts, monetary or otherwise, if Louisiana is truly concerned with preventing the NCAA's potential imposition of severe sanctions on Louisiana's citizens and university constituents.¹⁷⁵

Instead, the only conditions the Louisiana statute imposes on gifts of money is that they (1) cannot later result in loss of an athlete's eligibility or university sanctions, or (2) be given to induce an athlete to enter into an agent agreement.¹⁷⁶ Stated more directly, if the agent wants to give the student-athlete enough money for round trip airfare and accommodations to Hawaii, or even enough money for the student-athlete to buy his own private, single-engine plane so he can fly himself and all his college, high school and elementary school friends wherever he wants, or better yet, make the student-athlete a multi-millionaire overnight, Louisiana authorizes the monetary payments.¹⁷⁷ The agent just has to ensure he sneaks around and does not get caught by the NCAA. Because if he does get caught, the Louisiana legislature will, with remarkable and speedy hindsight, take back everything it previously said about allowing agent gifts to student-athletes. Once Louisiana determines that the student-athlete lost eligibility or the NCAA sanctioned the university attended by the student-athlete, it's lights out for the agent.

173. See *supra* note 164 and accompanying text (regarding the university's knowledge of a student-athlete's misconduct and its effect on NCAA sanctions).

174. See LA. REV. STAT. ANN. § 4:433(A).

175. This article does not address the necessity nor desirability of NCAA rules regulating a student athlete's retaining of an athlete agent and acceptance of gifts from an agent. Instead, this article merely discusses the potential ramifications and consequences caused by the enactment of the twenty-eight athlete agent statutes across the nation. The statutory ramifications and consequences vary greatly due to the impact of the NCAA (and other similar organizations) whose rules are directly applicable to the state's universities and indirectly applicable to the athletes who attend those universities. See *supra* Part II.A., regarding the jurisdictional grip (or lack thereof) held by the NCAA over universities, athletes and agents.

176. See LA. REV. STAT. ANN. §§ 4:433(A)(1), 424(A)(7); see also *supra* note 55 and accompanying text.

177. See LA. REV. STAT. ANN. §§ 4:433(A)(1), 424(A)(7).

2. Prohibited Recipients

Twelve athlete agent statutes prohibit payments not only to the student-athlete herself, but also to other designated individuals holding certain specified relationships to the student-athlete.¹⁷⁸ Louisiana and Pennsylvania, for instance, prohibit payments to members of the student-athlete's immediate family and her parents or guardians.¹⁷⁹ Colorado likewise prohibits payments to the student-athlete's immediate family.¹⁸⁰ Connecticut prohibits payments to the student-athlete's guardians or immediate family members.¹⁸¹ Louisiana further adds to the list the student-athlete's "other advisors."¹⁸² Pennsylvania further adds anyone who substantially contributes to the economic support of the athlete, and proceeds to establish the criteria to meet this standard.¹⁸³

Other athlete agent statutes are more broad-reaching in the scope of persons (other than the athlete herself) to whom an agent may not provide gifts. Tennessee prohibits payments to a member of the student-athlete's family (as opposed to the student-athlete's "immediate" family as established in Colorado, Connecticut, Louisiana and Pennsylvania).¹⁸⁴ Oregon and Tennessee prohibit payments to anyone acting for, or on behalf of the athlete, which could obviously include almost any person.¹⁸⁵ More directly, seven statutes contain the most encompassing prohibitions, explicitly prohibiting an athlete agent from making such payments to "any person."¹⁸⁶ As noted previously, eight other states arguably include, implicitly, this same prohibition against payments to "any person" but the vague statutory wording makes it unclear whether the prohibition relates to

178. See ALA. CODE § 8-26-7(a)(9); ARIZ. REV. STAT. ANN. § 15-1762(A)(2), (A)(4); ARK. CODE ANN. § 17-16-205(4); COLO. REV. STAT. ANN. § 23-16-103(1)(a), (b); CONN. GEN. STAT. ANN. § 20-555(3), (5); FLA. STAT. ANN. § 468.456(1)(e), (f); KY. REV. STAT. ANN. § 164.683(7)-(8); LA. REV. STAT. ANN. §§ 4:424(A)(7)-(8), 433(A); NEV. REV. STAT. ANN. § 597.920(1)(c), (d); Or. H.B. 3628 § 5; 5 PA. CONS. STAT. ANN. §§ 3305(2)(ii)-(iii), (3), 18 PA. CONS. STAT. ANN. § 7107(a)(2)-(3); TENN. CODE ANN. §§ 49-7-2114(a)(5), (6), -2116(a).

179. See LA. REV. STAT. ANN. §§ 4:424(A)(7), 433(A); 5 PA. CONS. STAT. ANN. § 3305(2)(ii)-(iii), 18 PA. CONS. STAT. ANN. § 7107(a)(2).

180. See COLO. REV. STAT. ANN. § 23-16-103(1)(b).

181. See CONN. GEN. STAT. ANN. § 20-555(5).

182. LA. REV. STAT. ANN. § 4:424(A)(7). Louisiana does not define the term "other advisors." See generally LA. REV. STAT. ANN. §§ 4:421, 424, 433.

183. See 5 PA. CONS. STAT. ANN. § 3305(2)(iii), 18 PA. CONS. STAT. ANN. § 7107(a)(2).

184. See COLO. REV. STAT. ANN. § 23-16-103(1)(b); CONN. GEN. STAT. ANN. § 20-555(5); LA. REV. STAT. ANN. § 4:433(A); 5 PA. CONS. STAT. ANN. § 3305(2)(ii), 18 PA. CONS. STAT. ANN. § 7107(a)(2); TENN. CODE ANN. § 49-7-2114(a)(6).

185. See Or. H.B. 3628 § 5; TENN. CODE ANN. § 49-7-2116(a).

186. ALA. CODE § 8-26-7(a)(8); ARIZ. REV. STAT. ANN. § 15-1762(a)(4); ARK. CODE ANN. § 17-16-205(a)(4); FLA. STAT. ANN. § 468.456(1)(f); KY. REV. STAT. ANN. § 164.683(7); NEV. REV. STAT. ANN. § 597.920(1)(d); TENN. CODE ANN. §§ 49-7-2114(a)(6), -2116(a).

“any person” or only to payments to the athletes themselves.¹⁸⁷ For example, the Texas statute provides that an athlete agent may not offer anything of value to induce an athlete to enter into an agreement.¹⁸⁸ The statute does not further specify to whom the agent cannot offer anything of value (i.e., just the “athlete” or “any person”).¹⁸⁹ The other seven states contain the same vague statutory language.¹⁹⁰ In Appendix B, these states are denoted with a question mark as a result of this ambiguity.

3. Authorized Payments and Conduct

The athlete agent statutes of twenty-three states either implicitly or explicitly *authorize* gifts to athletes under certain conditions.¹⁹¹ The authorization for these gifts would also permit gifts to the same individuals discussed *supra*, who bear the statutorily designated relationships to the athlete.¹⁹²

a. *Implicit Authorization*

Some athlete agent statutes *implicitly* authorize certain gifts to athletes and others by *conditioning* the gift prohibition on the occurrence of several factors. In other words, by *explicitly prohibiting* gifts only under certain conditions, these statutes *implicitly authorize* gifts not satisfying those conditions. For example, Connecticut and Pennsylvania *explicitly prohibit* gifts to a student-athlete *before* intercollegiate eligibility expires.¹⁹³ As a necessary consequence of the explicit, conditional prohibition on the

187. See KAN. STAT. ANN. § 44-1508; MD. CODE ANN. BUS. REG. § 4-421; MO. ANN. STAT. § 436.212; N.C. GEN. STAT. § 78C-76; N.D. CENT. CODE § 9-15-04; OKLA. STAT. ANN. tit. 70, § 821.64; S.C. CODE ANN. § 59-102-40; TEX. OCC. CODE ANN. § 2051.351. See also *supra* notes 87-88 and accompanying text.

188. See TEX. OCC. CODE ANN. § 2051.351(a)(6).

189. See *id.*

190. See KAN. STAT. ANN. § 44-1508(b)(4); MD. CODE ANN. BUS. REG. § 4-421(a); MO. ANN. STAT. § 436.212(4); N.C. GEN. STAT. § 78C-76(a)(4); N.D. CENT. CODE § 9-15-04(1); OKLA. STAT. ANN. tit. 70, § 821.64(7); S.C. CODE ANN. § 59-102-40(4).

191. See ALA. CODE §§ 8-26-7, -22; ARIZ. REV. STAT. ANN. § 15-1762; ARK. CODE ANN. § 17-16-205; COLO. REV. STAT. ANN. § 23-16-103; CONN. GEN. STAT. ANN. § 20-555; FLA. STAT. ANN. § 468.456; GA. CODE ANN. § 43-4A-16; IOWA CODE ANN. § 9A.8; KAN. STAT. ANN. § 44-1508; KY. REV. STAT. ANN. §§ 164.683-684; LA. REV. STAT. ANN. §§ 4:424, 433; MD. CODE ANN. BUS. REG. § 4-421; MISS. CODE ANN. § 73-41-11; MO. ANN. STAT. § 436.212; NEV. REV. STAT. ANN. § 597.920; N.C. GEN. STAT. § 78C-76; N.D. CENT. CODE § 9-15-04; 70 OKLA. STAT. ANN. § 821.64; Or. H.B. 3628 § 5; 5 PA. CONS. STAT. ANN. § 3305, 18 PA. CONS. STAT. ANN. § 7107; S.C. CODE ANN. § 59-102-40; TENN. CODE ANN. §§ 49-7-2114, -2116; TEX. CODE OCC. ANN. § 2051.351.

192. See *supra* Part II.B.2.

193. See CONN. GEN. STAT. ANN. § 20-555; 5 PA. CONS. STAT. ANN. § 3305, 18 PA. CONS. STAT. ANN. § 7107.

timing of the gift, these two statutes *implicitly authorize* payments to an athlete during other times (i.e., *after* intercollegiate eligibility expires).¹⁹⁴ The problems resulting from conditional prohibitions, as opposed to absolute prohibitions as found in California and the NCAA regulations, have been discussed in great detail, *supra*.¹⁹⁵ Appendices A and B summarize and categorize, by state and prohibition, the *explicit prohibitions* found in each of the athlete agent statutes. Appendix B also extrapolates and categorizes the *implicit authorization* counterparts contained between the statutory lines.

b. *Explicit Authorization*

A detailed reading of the various gift provisions contained within the athlete agent statutes reveals that twelve athlete agent statutes *explicitly authorize* some agent conduct regarding gifts to athletes (as opposed to making the reader extrapolate the *implicit authorizations* from the *explicit, conditional prohibitions*).¹⁹⁶ Appendices A and B summarize and categorize these *explicit authorizations*. For example, Louisiana allows agent payments to a student-athlete if pursuant to the university's on-campus policy.¹⁹⁷ This provision makes sense because even the NCAA allows universities to fund some expenses for student-athletes for recruiting purposes.¹⁹⁸ Since the payments must be pursuant to the university's on-campus policy, and the university has every incentive to allow only those payments authorized by the NCAA, the Louisiana provision appears sound. Although Appendices A and B summarize and categorize the other explicit authorizations for agent conduct, one additional provision is worthy of discussion.

Maryland, North Carolina and Oklahoma contain this intriguing provision.¹⁹⁹ These three states allow an agent, *for the purpose of inducing an athlete to enter an agreement with the agent*, to provide an athlete with two things: (1) reasonable entertainment expenses; and (2) reasonable transportation expenses to and from the principal place of business of the

194. See generally *id.*

195. See *supra* Part II.B.1.

196. See ALA. CODE § 8-26-7(a)(8); ARIZ. REV. STAT. ANN. § 15-1762(A)(3); ARK. CODE ANN. § 17-16-205(a)(4); FLA. STAT. ANN. § 468.456(1)(f); KY. REV. STAT. ANN. § 164.683(7); LA. REV. STAT. ANN. § 4:433(B)(2); MD. CODE ANN. BUS. REG. § 4-421(b); MO. ANN. STAT. § 436.212(B)(2); N.C. GEN. STAT. § 78C-76(b)(4); OKLA. STAT. ANN. tit. 70, § 821.64(4); S.C. CODE ANN. § 59-102-40(4); TENN. CODE ANN. § 49-7-2114(a)(6).

197. See LA. REV. STAT. ANN. § 4:424(A)(8).

198. See NCAA MANUAL, *supra* note 13, art. 13 ("Recruiting").

199. See MD. CODE ANN. BUS. REG. § 4-421(b); N.C. GEN. STAT. § 78C-76(b)(4); OKLA. STAT. ANN. tit. 70, § 821.64(7).

athlete agent.²⁰⁰ The absurdity of the explicit authorization of these expenses catches the reader's eyes and launches to their mind faster than Olympian Michael Johnson bursts from the starting blocks.

First, the provision allows these expenses *for the express purpose of inducing a student-athlete to sign with the agent!* Since the NCAA rules declare ineligible a student-athlete who signs with an agent, one must wonder why these three states want to encourage such behavior. Further, these three states express an interest, in the same statutory sentences, in preventing this same behavior. They express this concern by explicitly providing that an agent could not offer any other money or things of value to an athlete to induce the athlete to sign with the agent. The statutes then proceed, however, to explicitly exclude from this prohibition reasonable entertainment and transportation expenses. The legislatures of these three states must possess a marvelous sense of humor!

The questions to be posed to the legislatures of Maryland, North Carolina and Oklahoma are too numerous to include in this article. However, the burning nature of those questions makes inclusion of some of them too much fun to pass up. First, why do they want to encourage behavior that explicitly violates NCAA rules? Also, if they want to allow these payments to induce student-athletes, why do they contradict themselves by also stating that other payments are not permitted as an inducement? What do these states mean by the term "reasonable" when the NCAA allows no such payments at all? It seems like \$1 would be unreasonable in the NCAA's eyes since it specifically disallows all payments to student-athletes, not only those payments that are "reasonable" or over a certain dollar amount. Is a \$120,000 payment to the student-athlete so she can buy a Mercedes-Benz (nothing other than an SL convertible would be an appropriate Christmas gift) reasonable in the eyes of these three states? Perhaps so, as long as the agent is giving the \$120,000 solely so the student-athlete will be "induced" into signing with the agent (as required by these three states). Even the NCAA's provisions relating to reimbursement of a student-athlete's travel expenses (by persons other than agents) generally utilize the term "*actual and necessary*" rather than "reasonable."²⁰¹

Further, what exactly constitutes "reasonable transportation expenses?" Is a limo ride to the agent's principal place of business for a star athlete "reasonable" (remember, we are talking about a future

200. Actually, in North Carolina and Oklahoma, it must be the agent's "registered" principal place of business. See N.C. GEN. STAT. § 78C-76(b)(4); OKLA. STAT. ANN. tit. 70, § 821.64.

201. See, e.g., *supra* note 27 and accompanying text.

millionaire here, not just your average student-athlete)? We can probably safely assume that under NCAA rules relating to reimbursement by non-agents, such transportation expenses would not be *actual and necessary*. How about a helicopter ride to the game (from the agent's principal place of business, of course, since we do not want to violate the statute)? Would the "reasonableness" of the helicopter ride depend upon whether the student-athlete was late for the game because he was too busy opening all of the "entertainment expense" gifts in the agent's office, which "inducement" slowed the agent down in getting the student-athlete to actually sign the agent contract? Do not tell your kids who the real Santa is now!

Does it matter to these three states that the consequence of inducing the student-athlete to sign with the agent is that the student-athlete will lose remaining NCAA eligibility? Does it matter to these three states that if the agent does not tell anyone about the payments or signing, and the university plays the athlete, that the university could lose millions of dollars from the NCAA via forfeited bowl revenue or foregone television air time? Does it matter to these three states if the university is a state university and the loss of millions of dollars equates to worse athletic and academic programs due to less funding that must be made up in the form of higher tuition for their resident students or higher taxes for their citizens?

By the way, is not almost any expense payment to a student-athlete in reality an "entertainment" expense? Assume Romeo was a jock and asked Juliet, "Doth not a Mercedes and new villa by the sea with built-in surround sound 'entertain' us?" Would not Juliet's answer be, "Yes, my love. Quite 'reasonably,' indeed. Doth not the loving agent also bestow upon you a gift certificate to furnish our new villa?" Although somewhat ridiculous, is it "entertainment" for an athlete agent to provide the student-athlete's dog with a diamond 24-carat gold collar, daily trips to the masseuse and a comfy temperature controlled feather bed?

One final question: what in the name of ESPN were these three states thinking when they provided that an agent, in direct violation of NCAA rules, can provide entertainment and transportation to athletes to *induce* yet another direct NCAA violation (i.e. the signing of an agent contract)? Actually, the above sentence misrepresented the facts as there are two more final questions (forgive us, doth not an attorney ask just one final question). Considering that the NCAA declares student-athletes ineligible in two primary ways when dealing with athlete agents (accepting gifts and signing with an agent), why did these three states even bother enacting an

athlete agent statute in the first place?²⁰² Because they just felt like specifically authorizing direct violations of NCAA rules? Simply put, the provisions defy logic and should be replaced with absolute prohibitions on agent gifts if the states want to protect their student-athletes and universities.

Unfortunately, these three states are not alone in their irrational statutory authorizations of athlete agent conduct. Louisiana, again, deserves another “honorable mention” for its statutory flaws.²⁰³ In particular, Louisiana explicitly provides that an athlete agent is permitted to enter an agent or professional sports services contract with a student-athlete under either of two conditions: (1) the student-athlete is being recruited by an institution of higher education; or (2) the student-athlete is participating in sports contests at an institution of higher education.²⁰⁴ Wow! Is an explanation of this statutory flaw really needed? Well, just in case, here it comes: *Hello Louisiana! These are exactly the same student-athletes that every other state in America with athlete agent legislation wants to protect.* The only athletes our colleges and universities want to recruit and eventually play are obviously those with intercollegiate eligibility remaining. Under NCAA rules, once the student-athlete signs the contract, he loses all remaining eligibility and the universities will not want to “recruit” or “play” him anymore.²⁰⁵ Louisiana, nonetheless, wants to take away all protection from these very same student-athletes.

Reading Louisiana’s athlete agent statute in its entirety, one can only arrive at certain inescapable conclusions, including but not limited to: (1) the persons who drafted the legislation have no understanding of “sports law” or at least NCAA rules; or (2) the drafters must have all been sports agents themselves, thereby drafting the legislation in a way that gives them free reign to shower student-athletes with gifts and contracts while they still have intercollegiate eligibility remaining – all in violation of NCAA rules. If one thinks about it, it is hard to punish an agent (even though Louisiana has a penalty provision in its statute) when the statute explicitly authorizes the agents to do everything they want to do anyway, regardless

202. Student-athletes can lose eligibility through ways other than contact with agents. For example, a student-athlete may lose eligibility for things such as poor grades, gambling and drug use. See NCAA MANUAL, *supra* note 13, art. 14 (“Eligibility: Academic and General Requirements”).

203. See *supra* Part II.B.1.b.iii., regarding other serious flaws with Louisiana’s athlete agent statute.

204. See LA. REV. STAT. ANN. § 4:433(B)(1)–(2).

205. In fact, if the writing is not limited to one sport, it forfeits the student-athlete’s eligibility in all sports. This is true even though NCAA rules generally permit a student-athlete to be a professional in one sport and retain eligibility in another. See NCAA MANUAL, *supra* note 13, § 12.1.2.

of the numerous devastating, multi-million dollar consequences potentially inflicted upon student-athletes and the universities for which they play. Let's be honest. The Louisiana legislature has fallen woefully short in any attempt to protect student-athletes or universities.

4. Agent Notice Requirements

Two athlete agent statutes, those of Alabama and Kentucky, mandate that the athlete agent provide notice of any gifts to student-athletes.²⁰⁶ The mandates contain requirements as to the proper recipients of the notice and the time frames within which the notice must be provided.²⁰⁷

a. To Whom

Alabama and Kentucky both require the notice to be given to either the athletic director or president of the university where the student-athlete is enrolled.²⁰⁸ Alabama also requires notice to be provided to the state, specifically the Alabama Athlete Agent Regulatory Commission.²⁰⁹

b. Timing Requirements

Alabama and Kentucky also require that the agent provide the notice to the athletic director or president (and, in Alabama, also to the state) within a designated time frame.²¹⁰ In both states, the notice must be provided: (1) before the student-athlete practices for, or participates in, an athletic event on behalf of a university; or (2) within seventy-two hours after providing the benefits, whichever occurs first.²¹¹

5. Statutorily Authorized/Prohibited Contact Only

As noted in the article on athlete solicitation of athlete clients, a far-reaching statutory provision found in nine states mandates that athlete agents make only that contact with student-athletes that is specifically authorized by statute.²¹² If the statute does not specifically authorize the

206. See ALA. CODE § 8-26-22(d); KY. REV. STAT. ANN. § 164.684(2).

207. See ALA. CODE § 8-26-22(d); KY. REV. STAT. ANN. § 164.684(2).

208. See ALA. CODE § 8-26-22(d); KY. REV. STAT. ANN. § 164.684(2).

209. See ALA. CODE § 8-26-22(a).

210. See *id.* § 8-26-22(d); see also KY. REV. STAT. ANN. § 164.684(2).

211. See ALA. CODE § 8-26-22(d); KY. REV. STAT. ANN. § 164.684(2).

212. See CAL. BUS. & PROF. CODE § 18897.63(a); KAN. STAT. ANN. § 44-1503(a); LA. REV. STAT. ANN. § 4:422(B); MD. CODE ANN. BUS. REG. § 4-423(2); MISS. CODE ANN. § 73-41-3; N.C. GEN. STAT. § 78C-72(2); OKLA. STAT. ANN. tit. 70, §§ 821.62(B); Or. H.B. 3628 § 6; TEX. CODE ANN. OCC. § 2051.004(a). See Sudia and Remis, *Athlete Solicitation*, *supra* note 5, Part II.E.7. for a

conduct, then the athlete agent cannot engage in the conduct. Such broad provisions may prohibit agent conduct that is otherwise permitted by the rules promulgated by the NCAA or other similar sports governing bodies.²¹³ Such provisions are contrasted with the states that provide that an athlete agent may not have contact with the student-athlete as prohibited by the athlete agent statute.²¹⁴ This latter type of statute does not prohibit an athlete agent from engaging in conduct not specifically authorized by the statute. Instead, the statute merely prohibits the agent from engaging in certain statutorily prohibited conduct.²¹⁵ Assuming other laws do not prohibit the activity, as long as the conduct is not specifically prohibited by any provision located within the statute, the agent can engage in the conduct.²¹⁶ The athlete agent can legally engage in the conduct even if it violates NCAA rules.²¹⁷

IV. CONCLUSION

Athlete agents who consider giving a student-athlete money or some other gift might be aware that the NCAA prohibits such conduct. However, the NCAA does not possess jurisdiction to sanction an athlete agent, thereby leaving the regulation of athlete agents to the state legislatures. Although many athlete agent statutes appear to prohibit gifts on their faces, a reading of these statutes demonstrates that in several states, several types of gifts are explicitly or implicitly authorized. The legislatures have paved the way for athlete agents to violate NCAA rules (e.g., by providing gifts of money or other things of value to student-athletes) without penalty to the agents themselves in many situations.

more detailed analysis of these statutory provisions.

213. See *supra* Part II.A. (regarding NCAA rules on agent contact with athletes); Part II.B.1. (regarding the arguably unconstitutional nature of such far-reaching provisions). See also Remis and Sudia, *Escaping Athlete Agent Regulation*, *supra* note 8 (regarding the constitutional defects and loopholes contained within each athlete agent statute).

214. See, e.g., ARK. CODE ANN. § 17-16-201(a). See Sudia and Remis, *Agent Solicitation*, *supra* note 5, Part II.E.8. for a more detailed analysis of these statutory provisions.

215. See ARK. CODE ANN. § 17-16-201(a).

216. See Sudia and Remis, *Agent Solicitation*, *supra* note 5, Part II.E.8., for a more detailed caveat to the athlete agent on the issue of other applicable laws.

217. See Sudia and Remis, *Agent Solicitation*, *supra* note 5, Part II.E.8.

APPENDIX "A"
STATUTORY REGULATION OF AGENT GIFTS TO
ATHLETES^f

ALABAMA

Gifts [ALA. CODE §§ 8-26-7, -22 (WESTLAW through 1999 Reg. Sess.)]

1. An athlete agent may not offer anything of value to any person to induce a student-athlete to enter into an agreement by which the agent will represent the student-athlete.
2. Negotiation regarding the agent's fee is not considered an inducement.
3. An athlete agent who provides any monetary (or in-kind) benefits to a student athlete who is subject to the rules and regulations of an intercollegiate sports governing body must notify the:
 - a. Athletic director (or president) of the college or university in which the student athlete is enrolled; and
 - b. Alabama Athlete Agent Regulatory Commission, that the athlete agent has the provided monetary (or in-kind) benefits to the student athlete.
4. An athlete agent must provide written notification of the acceptance of any benefits from an athlete agent:
 - a. Before the student athlete practices for, or participates in, an athletic event on behalf of a college or university;
or
 - b. Within seventy-two (72) hours after providing such benefits,
whichever occurs first.

ARIZONA

Gifts [ARIZ. REV. STAT. ANN. §§ 15-1762, -1763 (West, WESTLAW through 1999 Reg. Sess. and 2d Special Sess.)]

1. An athlete agent may not offer (or provide) anything of value or benefit to an athlete if the value or benefit would cause the athlete to forfeit eligibility to participate in interscholastic athletic competition. This prohibition does not apply to a contract between a professional sports team and an athlete if the professional sports team negotiates directly with the athlete.
2. An athlete agent may not offer (or provide) anything of value or benefit to any person to induce (or attempt to induce) an athlete to enter into an agreement by which an athlete agent will represent the athlete.
3. Before signing an agent contract, an athlete agent may not compensate an athlete.

ARKANSAS

Gifts [ARK. CODE ANN. § 17-16-205 (Michie, WESTLAW through 1999 Reg. Sess.)]

1. An athlete agent may not offer anything of value to any person to induce a student athlete to enter into an agent contract by which the athlete agent will represent the student athlete.
2. Negotiation regarding the athlete agent's fees is not considered an inducement.

CALIFORNIA

Gifts [CAL. BUS. & PROF. CODE § 18897.6 (West 1990)]

1. No athlete agent (or athlete agent's representative or employee) may (directly or indirectly) offer (or provide):
 - a. Money; or
 - b. Any other thing of benefit or value to a student athlete.

COLORADOGifts [COL. REV. STAT. ANN. § 23-16-103 (West 1998)]

1. An athlete agent may not offer anything of monetary value to a student athlete (or a member of the student athlete's immediate family) to induce the student athlete (either at the time of offering or at some future time) to enter into a written or oral:
 - a. Agent contract; or
 - b. Any other agreementby which the athlete agent will represent the student athlete.
2. No person (whether or not for compensation) may assist, aid or abet an athlete agent in committing any of the actions specified in #1 *supra*.

CONNECTICUTGifts [CONN. GEN. STAT. ANN. § 20-555 (West 1999)]

1. An athlete agent may not give (or offer or promise) anything of value to:
 - a. An athlete;
 - b. The athlete's guardian; or
 - c. Any member of the athlete's immediate familybefore the athlete's eligibility for collegiate athletics expires.

FLORIDAGifts [FLA. STAT. ANN. § 468.456 (West 1994)]

1. An athlete agent may not offer anything of value to any person to induce a student athlete to enter into an agreement by which the agent will represent the student athlete.
2. Negotiation regarding the agent's fee is not considered an inducement.

GEORGIA**Gifts [GA. CODE ANN. § 43-4A-16 (WESTLAW through 1999 Gen. Ass.)]**

1. Prior to the signing of an agent contract, an athlete agent may not compensate any athlete.

INDIANA

*

IOWA**Gifts [IOWA CODE ANN. § 9A.8 (West 1995)]**

1. An athlete agent may not give anything of value to a student athlete until after completion of the student athlete's last intercollegiate athletic contest (including any postseason contest).

KANSAS**Gifts [KAN. STAT. ANN. § 44-1508 (WESTLAW through 1998 Reg. Sess.)]**

1. An athlete agent may not offer anything of value to induce an athlete to enter into an agreement by which the athlete agent will represent the athlete.

KENTUCKY**Gifts [KEN. REV. STAT. ANN. §§ 518.080, 164.04, .06 (Michie, WESTLAW through 1998 Reg. Sess.)]**

1. A sports agent may not:
 - a. Procure (or offer or promise) any form of financial inducement or incentive to a student athlete in order to obtain employment as the student athlete's sports agent;

- b. Offer anything of value to any student athlete in exchange for the student athlete's entering into a contractual relationship with the agent; or
 - c. Offer anything of value to a student athlete (or to any person) to induce a student athlete to enter into an agreement by which the agent will represent the student athlete.
2. Negotiation regarding the agent's fee is not considered an inducement.
 3. An athlete agent who provides any monetary (or in kind) benefits to a student athlete who is subject to the rules and regulations of an intercollegiate sports governing body must notify the athletic director (or president) of the college or university in which the student athlete is enrolled that the athlete agent has provided monetary (or in kind) benefits to a student athlete.
 4. An athlete agent must provide written notification of the acceptance of any benefits from an athlete agent:
 - a. Before the student athlete practices for, or participates in, an athletic event on behalf of a college or university; or
 - b. Within seventy-two (72) hours after providing the benefits,whichever occurs first.

LOUISIANA

Gifts [LA. REV. STAT. ANN. §§ 4:424, 433 (West, WESTLAW through 1999 Reg. Sess.)]

1. An athlete agent may not offer anything of value to the athlete (or the athlete's parents, legal guardians or other advisors) excluding reasonable:
 - a. Entertainment expenses; and
 - b. Transportation expenses to and from the athlete agent's registered principal place of business,to induce an athlete to enter into an agreement (written or oral) by which the athlete agent will represent the athlete.

2. Except as provided with respect to on-campus agent interviews (*see* Appendix A), an athlete agent may not give anything of value to an athlete (or the athlete's parents, legal guardians or other advisors).
3. No person may make (or offer):
 - a. A monetary payment; or
 - b. Anything of value in excess of \$500, to an athlete (or a member of the athlete's immediate family) where such offer does either of the following:
 - i. Causes the athlete to lose eligibility to participate in sports sanctioned by the federation or association of which the school or institution is a member; or
 - ii. Causes the institution of higher learning that the athlete attended (or was being recruited to participate in sports contests) at the time the payment (or thing of value) was received, to be:
 - a) Placed on probation;
 - b) Penalized; or
 - c) Otherwise sanctioned, by the federation or association of which the school or institution is a member.
4. An athlete agent is not prohibited from entering into an agent (or professional sport services) contract with an athlete who is:
 - a. Being recruited by an institution of higher education; or
 - b. Participating in sports contests at an institution of higher education.

MARYLAND

Gifts [MD. CODE ANN. BUS. REG. § 4-421 (WESTLAW through 1999 Reg. Sess.)]

1. A sports agent may not offer anything of value to induce a local athlete to make an agreement under which the sports agent will represent the local athlete, except that a sports agent may offer reasonable:
 - a. Entertainment expenses; and

- b. Transportation expenses to and from the principal place of business of the sports agent.

MICHIGAN

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MINNESOTA

*

MISSISSIPPI

Gifts [MISS. CODE ANN. § 73-41-11 (1999)]

1. Except as provided with respect to on-campus interviews, an athlete agent may not give anything of value to a Mississippi NCAA athlete until after completion of the athlete's last intercollegiate sports contest (including postseason games).

MISSOURI

Gifts [MO. ANN. STAT. § 436.212 (West, WESTLAW through 1999 1st Ext. Sess.)]

1. An athlete agent may not offer anything of value to induce a student athlete to enter into an agent (or financial services or professional sports services) contract (or other agreement) by which the athlete agent will represent the student athlete.
2. Negotiation regarding the athlete agent's fee is not considered an inducement.

NEVADA

Gifts [NEV. REV. STAT. ANN. § 597.920 (Michie, WESTLAW through 1997 Reg. Sess.)]

1. A sports agent may not offer anything of value to any person:
 - a. In exchange for the person entering into a contractual relationship with the sports agent; or
 - b. To induce the person to enter into a contractual relationship with the sports agent.

NORTH CAROLINA

Gifts [N.C. GEN. STAT. § 78C-76 (Michie, WESTLAW through 1998 Cum. Supp.)]

1. An athlete agent may not offer anything of value to induce an athlete to enter into an agreement by which the athlete agent will represent the athlete, excluding reasonable:
 - a. Entertainment expenses; and
 - b. Transportation expenses to and from the athlete agent's registered principal place of business.

NORTH DAKOTA

Gifts [N.D. CENT. CODE § 9-15-04 (WESTLAW through 1999 Reg. Sess.)]

1. An athlete agent may not offer anything of value to induce an athlete to enter an agreement by which the athlete agent will represent the athlete.

OHIO

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OKLAHOMA

Gifts [OKLA. STAT. ANN. tit. 70, § 821.64 (West 1997)]

1. A registered athlete agent may not offer anything of value to induce an Oklahoma non-NCAA athlete who has never before

signed a contract of employment with a professional sports team, to enter into an agreement (written or oral) by which the athlete agent will represent the athlete, excluding reasonable:

- a. Entertainment expenses; and
- b. Transportation expenses to and from the athlete agent's registered principal place of business.

OREGON

Gifts [H.B. 3628, 70th Leg., Reg. Sess. § 5 (Or. 1999)]

1. An athlete agent may not (directly or indirectly) offer (or provide) money (or anything of benefit or value) to:
 - a. A student athlete; or
 - b. Any person acting for or on behalf of a student athlete, for the purpose of inducing the student athlete to enter into an agent (or endorsement or professional sports services) contract.

PENNSYLVANIA

Gifts [5 PA. CONS. STAT. ANN. § 3305 (West, WESTLAW through Act 1999-47), 18 PA. CONS. STAT. ANN. § 7107 (West, WESTLAW through Act 1999-47)]

1. An athlete agent may not give (or offer or promise) anything of value to:
 - a. A student athlete;
 - b. The student athlete's parent or guardian;
 - c. Any member of the student athlete's immediate family; or
 - d. Any individual who substantially contributes to the economic support of the student athlete, before the student athlete's eligibility for collegiate athletics expires.
2. An individual shall be deemed to have substantially contributed to the economic support of a student athlete if the individual provides:
 - a. 25% or more of the cost of:
 - i. Tuition;

- ii. Room and board; and
 - iii. Incidental expenses of the student athlete's education; or
- b. To the student athlete at minimal (or no) cost noncollege-based:
- i. Lodging;
 - ii. Meals; or
 - iii. Transportation to and from college classes.

SOUTH CAROLINA

Gifts [S.C. CODE ANN. § 59-102-40 (Law. Co-op., WESTLAW through 1999 Reg. Sess.)]

1. An athlete agent may not offer anything of value to induce a student athlete to enter into an agreement by which the agent will represent the student athlete.
2. Negotiation regarding the athlete agent's fee is not considered an inducement.

TENNESSEE

Gifts [TENN. CODE ANN. §§ 49-7-2114, -2116 (West, WESTLAW through 1999 Reg. Sess.)]

1. A sports agent may not offer anything of value to any person (including a family member of the student athlete) to induce a student athlete to enter into an agreement by which the agent will represent the student athlete.
2. Negotiation regarding the agent's fee is not considered an inducement.
3. A sports agent (or any person acting for or on behalf of a sports agent) may not knowingly offer (or give or loan) anything of value to:
 - a. A student athlete; or
 - b. Any person acting for or on behalf of a student athlete, during the student athlete's period of eligibility for the purpose of inducing the student athlete to enter into an agreement (or

agent contract or professional sport services contract) with the agent.

TEXAS

Gifts [TEX. OCC. CODE ANN. § 2051.351(6) (West, WESTLAW through 1999 Reg. Sess.)]

1. An athlete agent may not offer anything of value to induce an athlete to enter into an agreement by which the athlete agent will represent the athlete.

[†] *CAVEATS:*

Please note the following statements concerning how to properly interpret Appendix A.

1. Appendix A paraphrases only those statutory provisions regulating monetary payments, loans or other gifts to an athlete or a member of the athlete's family or similar individuals.
2. Payments to persons in return for referrals of student athletes (e.g., payments to employees or coaches of colleges and universities) is beyond the scope of Appendix A, which pertains only to statutorily-regulated athlete agent contact occurring (directly or indirectly) with athletes.
3. In determining whether a person is either an athlete or agent, one must read the definitions sections of the statute in each state of interest. For a detailed analysis of the exemptions and loopholes found within athlete agent statutes on this issue, see generally Remis and Sudia, *Escaping Athlete Agent Regulation*, *supra* note 8.
4. Appendix A does not include the statutory provisions prohibiting a person from conducting business as an athlete agent (including providing money or other items of value or benefit) if the agent has not registered with the state. Instead, Appendix A deals with regulated gifts to athletes from properly registered agents. For a detailed analysis of the many states that

require agents to undergo licensure or registration prior to conducting business as an athlete agent, and the requirements and prohibitions pertaining thereto, see Remis, *Registration and Reporting*, *supra* note 4.

5. See Sudia and Remis, *supra* note 6, *Agent Contracts*, regarding the prohibitions and mandates contained within the athlete agent statutes pertaining to athlete agent contracts executed with athletes.
6. See Sudia and Remis, *supra* note 5, *Agent Solicitation*, regarding the prohibitions and mandates contained within the athlete agent statutes pertaining to athlete agent solicitation of athlete clients and related activities.

* Regulation of Agent Solicitation of Athletes Not Enumerated in Athlete Agent Statute.

STATUTORILY AUTHORIZED AND PROHIBITED BENEFITS TO ATHLETES	A	A	C	C	F	G	I	K	K	L	M	M	M	M	N	N	N	N	O	O	O	P	S	T	T		
AGENT MUST GIVE NOTICE OF B/V BY:	L	Z	A	O	T	L	A	N	A	S	Y	A	D	I	N	S	O	V	C	D	H	K	R	A	C	N	X
First* Before athlete practices/participates OR w/in 72 hrs of giving b/v																											
	X									X																	

Abbreviations used in Appendix B
X = Specifically enumerated provision located within the athlete agent statute.
 ? = Questionable due to vague wording of statute
B/V = Benefit or Value / **AD** = Athletic Director / **PPB** = Principal Place of Business / **Pres.** = President / **Univ.** = University or college
State = Secretary of State (or other state entity or commission - e.g., Alabama Athlete Agent Regulatory Commission)

CAVEAT

See caveat to Appendix A for instructions on properly interpreting Appendix A (and thus Appendix B).