

ATHLETE AGENT LEGISLATION IN THE NEW MILLENNIUM: STATE STATUTES AND THE UNIFORM ATHLETE AGENTS ACT

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I. INTRODUCTION

Sasha, the supermodel, left the agent's mansion after her courtesy date with the collegiate quarterback ended and the agent's limo driver returned the athlete to his dorm. The agent, not really sleepy, leans back in his imported Italian leather chair (green - like the color of money). Quite simply, he just could not stop thinking about the percentage fee that will

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drop his way from the lucrative sports and endorsement contracts the talented quarterback would certainly sign. The blue screen on the \$100,000 state-of-the-art projection screen system indicated that the agent eventually fell asleep after the DVD of his favorite movie, Jerry Maguire, stopped spinning (he especially loves the part about the fish). The agent awoke when the phone rang the next morning at 8:00 a.m. and the quarterback's voice emerged from the receiver saying "You are my agent, man. I had so much fun last night with Sasha. You're the best!" The agent smiled and told the quarterback, "Just remember who takes care of you. Now, get out there and practice so we can get you a nice piece of contract, the multi-million-dollar-flavored kind!" The quarterback hung up the phone and hit the weight room, benching 260 pounds for the first time.

The agent looked at his stack of registration packets from all of the states in which he conducts business. He also looked at the 2000 Uniform Athlete Agents Act that his personal assistant obtained off the Web. His personal assistant then told him that the NCAA's official website indicates that nobody - nobody - is registering in these states. The agent valiantly stood and made a broad sweeping motion with his arm, knocking every packet into the garbage can next to his desk. The agent looked at the overflowing garbage can and raised both arms in the air in triumphant glory, like an endzone dance of sorts. The agent then took his right index finger, pushed a button, and heard, "What can I do for you sir?" The agent pondered for a moment and said, "Call my masseuse, my neck hurts from sleeping in this chair last night. In fact, why don't you join me and get a massage too?" The soft, sexy voice on the other end, belonging to our friend Sasha, sensuously replied, "I'll bring the towels. How 'bout a dip in the pool afterwards?" The agent smiled grandly and said, "Yes, that would be quite pleasant. Let's go, shall we?"

[Meanwhile, a bill appeared on a state legislative floor seeking to amend that state's athlete agent statute for the sixth time in three years. Yes, they were going to get it right this time. They included more offenses, more agent activities that constitute offenses, added some more language to the statute that no reasonable person could comprehend, even putting in a savings clause providing that if a court declares one or more provisions invalid, the remaining provisions of the statute would remain intact. The House passed the bill and the Senate approved the same, but only after adding words that made no sense, such as "non-NCAA athlete" as Oklahoma creatively chose to do. On the bill's journey toward sure passage, the Governor asked the Lt. Governor, "What is this?" The Lt. Governor replied, "Oh, we need to watch out for those awful athlete

agents. They are very bad people, you know.” The Governor said, “Oh yeah,” and gave his John Hancock right where the yellow arrow tab tells him to sign. It was now law. The only thing left to do was to have some poor lost soul in the legislature renumber the statute in order to place it in an area on the books where nobody could find it, and leave part of the original statute intact so that agents would struggle to determine where the entire statute resides on the books - like Pennsylvania did when it decided to implement two different statutes regulating athlete agents. What a great idea, especially since the legislature can always amend it again next year if it ends up not working out!]

Several years ago, state legislatures began to tackle the scrambling issue of whether states should regulate athlete agent activities and, if so, to what extent. The answer continues to be an evasive one, as is evidenced by the abundance of differing athlete agent legislation currently in existence. The result of such legislative activity has been the birth of the twenty-eight athlete agent statutes currently in existence across the country.²

Legislatures enact athlete agent legislation for two main interrelated

2. Tallying the exiting athlete agent legislation produces the following statutes: 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. & PROF. CODE §§ 6106.7, 18895 to 18897.93 (West 1999); Colorado: COLO. REV. STAT. ANN. §§ 23-16-101 to -108 (West 1998); Connecticut: CONN. GEN. STAT ANN. §§ 20-553 to -569 (West 1999); Florida: FLA. STAT. ANN. §§ 468.451 to .457 (West, WESTLAW through 2000 1st Reg. Sess.); Georgia: GA. CODE ANN. §§ 43-4A-1 to -19 (WESTLAW through 2000 Gen. Ass.); Indiana: IND. CODE ANN. §§ 35-46-4-1 to -4 (West 1998); Iowa: IOWA CODE ANN. §§ 9A.1 to .12 (West 1995); Kansas: KAN. STAT. ANN. §§ 44-1501 to -1515 (WESTLAW through 1998 Reg. Sess.); Kentucky: KY. REV. STAT. ANN. §§ 164.680-.689 (West, WESTLAW through 1998 Reg. Sess.); Louisiana: LA. REV. STAT. ANN. §§ 4:420-433 (West, WESTLAW through 1999 Reg. Sess.); Maryland: MD. CODE ANN. BUS. REG. §§ 4-401 to -426 (WESTLAW through 1999 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 (West 1999); Missouri: MO. ANN. STAT. §§ 317.018, 436.200 to .212 (West, WESTLAW through 1999 1st Ext. Sess.); Nevada: NEV. REV. STAT. ANN. §§ 398.015 to .255, 597.920 (West, WESTLAW through 1999 Reg. Sess.); North Carolina: N.C. GEN. STAT. §§ 78C-71 to -81 (West, WESTLAW through 2000 Reg. Sess.); North Dakota: N.D. CENT. CODE §§ 9-15-01 to -05 (LEXIS, WESTLAW through 1999 Reg. Sess.); Ohio: OHIO REV. CODE ANN. §§ 4771.01 to .99 (Anderson, WESTLAW through portion of 123rd Gen. Ass.); Oklahoma: OKLA. STAT. ANN. tit. 70, §§ 821.61 to .71 (West 1997); Oregon: H.B. NO. 3628, 70th LEG., REG. SESS., §§ 1-12 (Or. 1999); Pennsylvania: 5 Pa CONS. STAT. ANN. §§ 3101 to -3312 (West, WESTLAW through 2000), 18 Pa. CONS. STAT. ANN. § 7107 (West, WESTLAW through 2000); South Carolina: S.C. CODE ANN. §§ 16-1-90, 16-1-100, 59-102-10 to -50 (WESTLAW through 2000 Reg. Sess.); Tennessee: TENN. CODE ANN. §§ 49-7-2111 to -2121 (WESTLAW through 2000 Reg. Sess.); Texas: TEX. OCC. CODE ANN. §§ 2051.001 to .553 (West, WESTLAW through 1999 Reg. Sess.).

reasons: (1) to discourage unscrupulous athlete agent activity, and (2) to protect the states' citizens and residents.³ Several legislatures have passed numerous amendments to their athlete agent statutes in an attempt to correct improvidently-enacted legislation.⁴ A twenty-ninth state (Washington) enacted legislation and, instead of amending the defects, simply repealed the statute altogether on April 30, 1999.⁵

Even with the plethora of amendments, however, most state athlete agent statutes fall short of the legislatures' stated goals.⁶ These goals often fail immediately upon statutory passage for several reasons, including overly burdensome regulations that convince agents to simply defy compliance, vague and constitutionally suspect directives making it difficult to even know how to comply, and lack of state resources to enforce agent compliance.

Due to the overly complex and contradictory nature of this massive set of state statutes, the authors of this Article began drafting a six article series in this Journal three years ago which examined in great detail every major provision (explicit and implicit) contained within each state's athlete agent statute. In particular, the six articles explored several significant aspects of statutory regulation of athlete agents and athletes, in the following order of publication:⁷

1. Civil, administrative and criminal liability of athlete agents and athletes;⁸
2. Registration and reporting requirements for athlete agents;⁹
3. Escaping athlete agent regulation through loopholes and constitutional defects contained within the athlete agent statutes;¹⁰

3. See *infra* note 21.

4. For an analysis of the numerous inherent defects contained within the athlete agent statutes, see *infra* notes 7-13 and the referenced articles.

5. See 1999 WASH. LAWS 1251.

6. See *supra* note 3 and accompanying text.

7. See Diane Sudia and Rob Remis, *Ethical and Statutory Limitations on Athlete Agent Income: Fees, Referrals and Ownership Interests*, 27 Fla. St. U. L. Rev. 787 (2000) [hereinafter Sudia and Remis, *Agent Income*] (providing a separate analysis of the ethical and statutory restrictions on athlete agent income).

8. See 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*] (explaining that various civil, administrative and criminal remedies and penalties may be imposed on athlete agents for numerous activities).

9. See 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*] (explaining that athlete agents are subjected to numerous registration and reporting requirements).

10. See Rob Remis and Diane Sudia, *Escaping Athlete Agent Statutory Regulation: Loopholes and Constitutional Defectiveness Based on Tri-Parte Classification of Athletes*, 9 SETON HALL J.

4. Athlete agent solicitation of athlete clients;¹¹
5. Athlete agent gifts to athletes;¹² and
6. Athlete agent contracts with athletes.¹³

As previously noted, since publication of the above-referenced articles commenced, several states have decided that their athlete agent statutes need overhauling and subsequently amended them. Further, the National Conference of Commissioners on Uniform State Laws (NCCUSL) initiated efforts to draft a uniform law governing agent-athlete relations. The effort included inviting many sports law specialists, from private practice to players' associations to law school professors, to participate in the drafting process.¹⁴ The NCCUSL titled its uniform law the "Uniform Athlete Agents Act" (hereinafter "UAA"), and gave its final approval to the new uniform law during its 2000 annual conference.¹⁵

This seventh article attempts to bring athlete agents up to date with the current legislation in all twenty-eight states so that they may more easily comply with athlete agent regulation, especially if they practice in more than one state. To ensure that this article is a useful tool for athlete agents regarding the potential obligations, responsibilities, and pitfalls associated with conducting business in any particular state, this article attempts to accomplish several goals. Part II of this article summarizes the NCAA's regulation of athlete agents and the corresponding need for state legislation. Part II highlights some of the major aspects of the athlete agent business commonly regulated by state legislation, by summarizing the state legislation enacted over the past several years in this rapidly-changing field. Instead of covering these aspects in great detail, this article directs the reader to the prior six article series for a more in-depth

SPORT L. 1 (1999) [hereinafter Remis and Sudia, *Escaping Athlete Agent Regulation*] (noting that an agent may find abundant loopholes and constitutional defects within the athlete agent statutes, predicated upon a tri-partite statutory classification of athletes).

11. See Sudia and 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*] (analyzing the numerous limitations on the ability of an athlete agent to solicit or otherwise contact student-athletes abound).

12. See Sudia and Remis, *Statutory Regulation of Agent Gifts to Athletes*, 10 SETON HALL J. SPORT L. 265 (2000) [hereinafter Sudia and Remis, *Agent Gifts to Athletes*] (explaining agent gifts to student-athletes are also heavily regulated).

13. 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*] (providing a detailed analysis of the regulations relating to agent contracts executed with athletes).

14. Information about the NCCUSL's uniform law, and a copy of the actual text, can be obtained from the NCCUSL's official website: <http://www.nccusl.org/> (last visited February 2, 2000).

15. See *id.* The NCCUSL held its annual conference in St. Augustine, Florida during the week of July 28 - August 4, 2000. *Id.*

analysis of their respective issues.¹⁶ Part II further sets forth the laws regulating athlete agent advertisements and misrepresentations. Appendices E and F summarize the state athlete agent laws containing provisions regulating agent advertisements and misrepresentations. Finally, Part III of this article analyzes the major terms of the recently drafted UAA.

This article includes several appendices, intended to give the athlete agent a bird's eye view of the most important regulations governing her athlete agent practice, as analyzed in the first two articles and updated for the new millennium. The appendices not only update the information contained in the first two articles, but also present new information in a very useful format for the agent. To assist the athlete agent, Appendices A, B and F summarize numerous important regulatory provisions, detailing which of the various athlete agent statutes contain those provisions.¹⁷ Further, Appendices A, B and F include a column for the UAA, so the reader may see how the UAA compares with existing athlete agent statutes, thus demonstrating whether the NCCUSL takes the position of the majority or minority of states on each particular issue. Finally, Appendices C and D demonstrate the agents' lack of compliance with the registration requirements, and the contact information for agents desiring to comply with the athlete agent legislation in each state, respectively.

II. STATUTORY REGULATION OF ATHLETE AGENT ACTIVITIES

A. NCAA Regulations

Twenty-eight states have enacted legislation regulating athlete agents, some of which is extremely extensive, complicated and restrictive of athlete agents. This is rather ironic when one considers that this massive amount of state legislation resulted from only a few short provisions contained within the National Collegiate Athletic Association (NCAA) regulations.¹⁸ Due to a lack of jurisdiction over non-member agents, the NCAA itself does not regulate athlete agents.¹⁹ Instead, the NCAA prohibits athletes from signing contracts with agents or accepting gifts

16. See *supra* notes 8-13 and accompanying text.

17. See *supra*, notes 8-13, for a listing of the articles and associated content. If the reader encounters difficulty in interpreting what a particular provision means in any of the appendices, the reader should refer to the appropriate article of the six article series for a more comprehensive analysis of those provisions. *Id.*

18. See *infra* note 20 and accompanying text.

19. See Remis, *Remedies and Penalties*, *supra* note 8, at Part II.B, analyzing the NCAA's jurisdiction and how it enforces its rules regulating athletes. *Id.*

from agents.²⁰ Still, since the NCAA renders athletes ineligible for further intercollegiate play after hiring an agent or accepting gifts, and imposes severe penalties on its member institutions for playing an ineligible athlete, numerous states felt compelled to enact legislation to protect these institutional and athlete citizens and residents.²¹

Interestingly, the prohibitions found in many state athlete agent statutes go far beyond the NCAA prohibitions on athlete agents. For example, the NCAA does not prohibit a student-athlete from simply talking to an athlete agent.²² In fact, the NCAA explicitly permits student-athletes to talk to agents in appropriate situations.²³ Nevertheless, some athlete agent statutes prohibit agents from merely talking to athletes.²⁴ Apparently not "concerned" with whether they share the same "concerns" as the NCAA, some legislatures prohibit all forms of agent contact with a student-athlete, other than certain agent conduct that those legislatures specifically delineate in their respective statutes.²⁵

The NCAA is currently reviewing its long-standing principle of amateurism in an effort to determine whether this ideal still retains its validity in today's collegiate sports or whether the NCAA should deregulate amateurism and thereby compromise this time-honored principle. Specifically, the NCAA's "Division I Vision Statement for Amateurism Deregulation" provides:

20. See e.g., NCAA CONST., OPERATING BYLAWS AND ADMINISTRATIVE BYLAWS, art. 12, *reprinted in* 1999-00 NCAA DIVISION I MANUAL [hereinafter NCAA MANUAL]. For an extensive analysis on the NCAA's prohibition on agent solicitation, gifts and contracts, see *supra* notes 11-13 and the referenced articles.

21. Specifically, the Colorado athlete agent statute provides:

Legislative declaration. The general assembly hereby finds that dishonest or unscrupulous practices by athlete agents who solicit representation of student athletes can cause significant harm to student athletes and to the institutions of higher education for which they play. It is the general assembly's intent to protect the interests of student athletes and institutions of higher education by limiting the contacts between athlete agents and student athletes and by setting requirements for contracts entered into between athlete agents and student athletes.

COLO. REV. STAT. ANN. § 23-16-101 (West 1997).

22. See Sudia and Remis, *Agent Solicitation*, *supra* note 11, at Part II.B.

23. See *supra* notes 11-13 and the referenced articles for a more detailed analysis of this issue.

24. See *id.* at Part II.E. The NCAA provides that student-athletes must not sign a contract with, or take gifts from, an agent. See Sudia and Remis, *Agent Gifts*, *supra* note 12, at Part II.A (NCAA rules prohibiting agent gifts); see also Sudia and Remis, *Agent Contracts*, *supra* note 13, at Part III (NCAA rules prohibiting execution of contracts). The NCAA could just as easily mandate that the student-athlete never talk to an athlete agent. However, the NCAA has chosen not to take this route. See Sudia and Remis, *Agent Solicitation*, *supra* note 11, at Part II.B.

25. See Sudia and Remis, *Agent Solicitation*, *supra* note 11, at Part II.E.7.

NCAA Division I Amateurism Deregulation. Vision Statement.

Debate over deregulation of NCAA amateurism rules began as a result of an increasing number of reinstatement requests from schools on behalf of prospective and enrolled student-athletes. The number and types of requests indicated a desire by the membership to include these student-athletes in their programs. Also, the application of the current rules resulted in inconsistency when determining the consequences of various amateurism violations. As a result of such inconsistency, some prospects lost all or a significant amount of their collegiate eligibility for violations that did not result in any competitive advantage, while other prospects who participated in extensive organized competition and gained significant competitive advantage were able to enjoy four seasons of collegiate competition.

In addressing these and other inconsistencies, deregulation seeks to create legislation that provides for the reasonable treatment of student-athletes while ensuring competitive equity among student-athletes who actually have gained a competitive advantage. Proposals for the preenrollment period seek to enhance the welfare of the prospective student-athletes while addressing the competitive advantage that some prospective student-athletes gain prior to enrollment. For postenrollment, deregulation strives to enhance student-athlete welfare while also focusing on a commitment to academics, treatment of the student-athlete as a student, welfare of the team, integrity of the sport, and the interests of the institution and community. Ultimately, as deregulation continues as an ongoing process, it will result in legislation that is consistent and reasonable while preserving the uniqueness and integrity of intercollegiate athletics.²⁶

If the NCAA changes its philosophy on amateurism and deregulates the matter, it seems logical that eventually the NCAA might directly or indirectly amend or repeal its rules regulating athletes' utilization of athlete agents. It would be difficult for the NCAA to argue convincingly that an athlete agent helping an athlete negotiate a contract, or merely agreeing to help negotiate a contract in the future, or simply buying the athlete a five dollar lunch would provide the athlete with a "competitive advantage" over other athletes. On the other hand, providing the athlete with expensive gifts such as a luxury automobile or a new 6000 square foot home could quite conceivably provide a competitive advantage. The competitive advantage in this situation, although indirect, would surface by making life off the field more enjoyable. In other words, all of life's little distractions, discomforts, and heartaches would simply disappear and the poor athlete could concentrate more on practicing and winning rather

26. NCAA Division I Amateurism Deregulation Vision Statement. *available at* http://www.ncaa.org/agents_amateurism (n.d.).

than on when and where her next meal would arrive.

Thus, the NCAA would have to make one of two choices. First, the NCAA could take an absolutist approach. In other words, it could set a dollar value limit on gifts from agents or it could simply retain its current total ban on agent gifts regardless of the competitive advantage to the athlete. Alternatively, the NCAA could take a relaxed approach and decide each situation on a case-by-case basis to see if the agent bestowed a competitive advantage on the athlete. Deciding exactly what agent gifts provide a competitive advantage (e.g., a nearly broken down Honda Civic, a brand new Mercedes, or a job for the athlete's mother or father at the agent's business) would likely cause the NCAA a myriad of interpretive difficulties. Only time will tell, however, what the NCAA will ultimately decide regarding deregulation of amateurism and an athlete's utilization of an athlete agent. If the NCAA eventually authorizes the use of athlete agents, most athlete agent statutes would become even more awkward and useless than they are at the current time.²⁷

B. Civil and Criminal Liability of Athlete Agents and Athletes

It can be argued that buying an athlete a "stadium hotdog" and "soft pretzel" do not rise to the level of culpable conduct one generally contemplates when classifying an action as criminal in nature. In fact, agents can be extremely beneficial to athletes, especially experienced agents.²⁸ For example, agents might "bring to the negotiation table" vast knowledge and experience concerning taxes, deferred compensation, salary caps, bonus systems, and prospects of being drafted before the athlete's senior year in college.²⁹ Understandably, most athletes would know little about such subjects so vital to their careers, and the agent's knowledge and experience would certainly benefit most athletes, including the time before, during and after the athletes' collegiate years. Yet, some state legislatures criminalize even small agent "tokens of affection" or "misdeeds," such as merely talking to an athlete and giving her excellent advice.³⁰ Even more striking, some legislatures classify such trivial athlete agent conduct as felonious, rather than misdemeanor, in nature.³¹

Currently, twenty-six states impose civil penalties or damages upon

27. See *supra* notes 3 and 21 (regarding the two-fold purpose of most athlete agent statutes). See also *supra* notes 8-13 and accompanying text.

28. See Remis, *Remedies and Penalties*, *supra* note 8, at III.A.3, explaining the positive benefits agents can bring to their relationships with athletes.

29. See *id.*

30. See generally, Sudia and Remis, *Agent Solicitation*, *supra* note 11.

31. See *infra* Appendix A.

the *agent* for violations of their athlete agent statutes.³² In 1998, the number of states imposing civil penalties totaled only twenty-three, thus showing an increase of three states in the past two years.³³ The same twenty-six states currently criminalize such violations committed by *agents*.³⁴ In 1998, only twenty-four states had such legislation, evidencing an increase of two states in the past two years.³⁵ In contrast, only seven states criminalize such violations committed by *athletes*,³⁶ and only thirteen states impose civil penalties or damages upon *athletes* for such violations.³⁷ In 1998, the numbers were five (criminal) and eight (civil), showing an increase of two and five states, respectively.³⁸ Thus, the trend of the states leans toward increasing civil and criminal penalties against both agents and athletes, but against athletes to a much lesser extent.³⁹ Further, of the twenty-six states that deem agent violations of the athlete agent statute criminal in nature, some classify agent misconduct as felonious whereas others classify such conduct as misdemeanor

32. See *infra* Appendix A. The twenty-six states include: Alabama, Arizona, Arkansas, California, Connecticut, Florida, Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, and Texas. See *supra* note 2.

33. Actually, four states added civil penalties but Washington repealed its statute in 1999, thus giving a net increase of three more states imposing civil penalties in the past two years. See Remis, *Remedies and Penalties*, *supra* note 8, at Part I (regarding the penalty status as of 1998).

34. See *infra* Appendix A; see also *supra* notes 2, 32.

35. Again, three states actually added criminal penalties but Washington repealed its statute in 1999, thus giving a net increase of two more states imposing criminal penalties in the past two years. See Remis, *Remedies and Penalties*, *supra* note 8, at Part I (regarding the penalty status as of 1998).

36. *Id.* The seven states are Alabama, Iowa, Kentucky, Louisiana, Mississippi, Oregon, and South Carolina. Mississippi and Louisiana arguably criminally penalize athletes, even though most criminal sanctions in their statutes are directed toward agents or attorneys only. An identical provision found in both statutes seems to penalize athletes, but only if the athlete files a false sworn statement or gives false sworn testimony concerning activities covered by the athlete agent statute. LA. REV. STAT. ANN. § 426 (West 1997); MISS. CODE ANN. § 73-41-15 (1996).

Arguably, other states (*e.g.*, Connecticut, Maryland, Missouri, North Carolina and Ohio) criminalize athlete activities based on the complicated wording of the athlete agent statutes in those states. See Remis, *Remedies and Penalties*, *supra* note 8, at 4 n.5.

37. The thirteen states that impose civil penalties or damages upon athletes are: Alabama, Arizona, Arkansas, Florida, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Oregon, South Carolina, and Tennessee. Again, however, some athlete agent statutes are vaguely worded and thus it is difficult to determine if they reach athlete activities (rather than just those of the agent). Accordingly, other states might also impose civil sanctions on athletes for violations of athlete agent statutes. See *supra* note 36; see also Sudia and Remis, *Escaping Athlete Agent Regulation*, *supra* note 10.

38. See Remis, *Remedies and Penalties*, *supra* note 8, at Part I.

39. In fact, some states deem agent violations as a felony but athlete violations as only misdemeanors. See *e.g.*, KY. REV. STAT. ANN. § 164.689 (Michie, WESTLAW through 1998 Reg. Sess.).

offenses.⁴⁰ Some states utilize a hybrid approach, classifying agent misconduct as either felonies or misdemeanors depending on the particular agent conduct at issue.⁴¹ As Appendix A reveals, twenty states classify all or some agent misconduct as misdemeanor offenses.⁴² On the other end of the criminal spectrum, eleven states classify all or some agent misconduct as felony offenses.⁴³ Eleven is a significant number when one considers that some of these states deem it a felony for agents to engage in conduct which arguably proves: (1) harmless, or even more likely, extremely beneficial to the athlete; and (2) permissible under NCAA regulations.⁴⁴

On the other hand, it is easy to understand a state's argument for imposing criminal liability on an agent, even when characterizing such crimes as felonies. Specifically, certain violations of the athlete agent statutes can cause extremely harsh, even devastating, consequences to an athlete and the university that the athlete attends. If the university is state-supported, the state can also suffer enormous financial harm due to athlete agent actions. As noted *supra*, legislatures enact athlete agent legislation for two main inter-related reasons, namely, discouraging unscrupulous athlete agent activity and protecting the states' citizens and residents.⁴⁵ Agents can be very creative when attempting to get a star athlete to sign with them, thereby engaging in highly unethical behavior. The range of unethical agent conduct injurious to athletes is far-ranging, including agent mismanagement of income, excessive agent fees, varying types of conflicts of interest, agent incompetence, overly aggressive client recruitment practices, agent disruption of existing contractual relationships of the athlete, and agent misappropriation of athlete funds.⁴⁶ More importantly, the damage that an agent may potentially inflict upon an

40. For example, in Arizona, agent misconduct is deemed a misdemeanor, *see* ARIZ. REV. STAT. ANN. §§ 15-1761 to -1765 (West, WESTLAW through 1999 1st Reg. Sess. and 2d Special Sess.), whereas in Arkansas, agent misconduct is deemed felonious, *see* ARK. CODE ANN. §§ 17-16-101 to -203 (Michie, WESTLAW through 1999 Reg. Sess.).

41. *See e.g.*, KY. REV. STAT. ANN. § 164.689 (Michie, WESTLAW through 1998 Reg. Sess.).

42. *See infra* Appendix A. These twenty states include: Alabama, Arizona, California, Connecticut, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Missouri, Nevada, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, and Texas. *See supra* note 2.

43. *See infra* Appendix A. These eleven states include: Alabama, Arkansas, Florida, Georgia, Indiana, Kentucky, Mississippi, North Carolina, Oregon, South Carolina and Tennessee. *See supra* note 2.

44. *See supra* notes 28-29 and accompanying text.

45. *See supra* notes 3 and 21 and accompanying text.

46. *See* Michael A. Weiss, *The Regulation Of Sports Agents: Fact or Fiction?*, 1 SPORTS LAW. J. 329, 331 (Spring 1994) (citations omitted). *See also* Remis, *Remedies and Penalties*, *supra* note 8, at Part III.A, relating an example of how such activities can mysteriously be associated with even agent injury or death.

athlete, university, and state can quickly and easily reach the multi-million dollar threshold when one takes into account the multi-million dollar payout of collegiate football bowl games and basketball games – not to mention the corresponding television contract revenues.⁴⁷

One can also understand the state's argument for imposing both civil and criminal liability upon an *athlete* (not just the agent) since the same conduct generally causes the university and/or state to suffer the same multi-million dollar loss.⁴⁸ In other words, the agent does not usually act alone, since it "takes two to tango" for an athlete agent to violate the NCAA regulations. For example, one person (i.e., the agent) generally cannot give a gift without someone (i.e., the athlete) accepting the gift. As noted earlier, the NCAA does not even regulate agents, but only indirectly governs their actions through its regulation of member institutions.⁴⁹

The types of statutory penalty provisions found within the athlete agent statutes vary widely. Generally, however, most statutes at least contain provisions which fall within one or more of the following broad categories: (1) restrictions on the agent's license; (2) posting and forfeiture of surety bonds or malpractice insurance; (3) legal validity of the agent contract and the athlete's ability to rescind the contract; (4) forfeiture of the agent's right to repayment of items paid on behalf of the athlete; (5) refunds of monies paid to the agent by the athlete or on her behalf; (6) civil/administrative fines; (7) civil causes of action against the agent by the athlete, university, state, or other injured person or business; and (8) criminal fines or imprisonment.⁵⁰ Appendix A sets forth a summary of some typical statutory provisions imposing penalties against athlete agents, and also specifies which states classify agent misconduct as civil or criminal in nature. Appendix A further delineates which states impose civil and/or criminal liability on athletes (rather than just the agents).⁵¹ However, one must carefully analyze some of the athlete agent statutes to learn exactly what type of conduct the agent must commit to subject himself to criminal prosecution. First, the statutes contain

47. See Remis, *Remedies and Penalties*, *supra* note 8, at Part IIB, analyzing the potential penalties that the NCAA may thrust upon a university (and indirectly upon an athlete) for playing an ineligible athlete due to his signing with an agent. See *id.* at Part II.D. The NCAA classifies penalties against institutions into two groups: penalties for "major violations" and penalties for "secondary violations" See *id.*, discussing the multi-million dollar payouts at stake; *Id.* at Part III.D.

48. See Remis, *Remedies and Penalties*, *supra* note 8, at Part III.

49. See *supra* notes 19-20.

50. See generally Remis, *Remedies and Penalties*, *supra* note 8, detailing the provisions imposing civil or criminal penalties.

51. See *id.*

unconstitutionally vague and overbroad provisions.⁵² Additionally, the issue gets even muddier when this vague language combines with the doctrine of general versus specific intent crimes.⁵³

C. Registration and Reporting Requirements

A critical duty of the athlete agent is to comply with the registration and reporting requirements of every state in which he conducts business as an agent. Regarding the registration requirements, the states have made it very costly and time-consuming for agents to register. As a result, the burdensome statutory requirements prove counter-productive in that few agents actually register, as demonstrated in Appendix C.⁵⁴ Further, Appendix B summarizes the most common registration and reporting requirements contained within the athlete agent statutes.⁵⁵

Under the current statutes, some states charge the athlete agents over \$1000 annually to register and conduct business. This is in addition to requiring numerous forms and references.⁵⁶ These fees can quickly become cost prohibitive, especially for those individuals just starting out in the athlete agent business. The paperwork can be time prohibitive for all agents alike, but especially those established in the industry and representing multiple clients in several states. If the agent contacts athletes in several states, she potentially subjects herself to multiple states' jurisdiction, although the constitutionality of some of the statutes (at least in part) is quite suspect.⁵⁷

Registration requirements include, but are not limited to: (1) formal written applications and fees; (2) character references; (3) disclosure of past and/or current clients; (4) disclosure of past criminal or unethical conduct; (5) posting of surety bonds or malpractice insurance; (6) disclosure of past employment history and pertinent training or education; and (7) written examination.⁵⁸ In fact, surety bond requirements equal \$100,000 in some states, and even the availability of malpractice insurance

52. See generally Remis and Sudia, *Escaping Athlete Agent Regulation*, *supra* note 10.

53. See Remis, *Remedies and Penalties*, *supra* note 8, at Part III.C.4.a. See also Appendices C and D) (analyzing this issue comprehensively).

54. See Appendix C (listing of the number of athlete agents currently registered in each state); see also Remis, *Registration and Reporting*, *supra* note 9, at Appendix B (listing of the number of athlete agents registered in each state during 1998). As one can easily see, agent registration remains low and does not show much sign of improvement. *Id.*

55. See *id.* (detailing the numerous registration requirements).

56. See e.g., OKLA. STAT. ANN. tit. 70, § 821.62 to .71 (West 1997).

57. See generally Remis and Sudia, *Escaping Athlete Agent Regulation*, *supra* note 10.

58. See Remis, *Registration and Reporting*, *supra* note 9, at Part III.

for athlete agents might present insurmountable obstacles.⁵⁹ Of course, if the agent does not obtain a bond, the agent could put in the state's hands \$100,000 of her own money to satisfy the bond requirement. Some states specifically permit such agent action. For example, in Alabama, a malpractice insurance policy, certificate of deposit payable to the Secretary of State, or savings account assigned to the Secretary of State, each in the amount of \$100,000, shall be deemed the equivalent of a surety bond.⁶⁰ Such systems, however, favor wealthy, established agents over agents just starting out in the agent business with little or no cash flow at their disposal.

Once registered, the various legislatures ensure that the prohibitive paperwork and fees do not end. Many states impose registration renewal procedures and several reporting requirements, usually on an annual or biannual basis.⁶¹ Multiply this by the number of states in which an agent can potentially represent clients and it becomes easy to envision why many agents conduct business without properly registering, all in violation of the civil and criminal laws of several states.⁶² Reporting requirements include non-exhaustively: renewal applications and fees; continuing education requirements; record keeping requirements for travel and entertainment expenses, names of current clients, fees charged and services rendered; trust accounting obligations; and record retention and production policies.⁶³ Finally, several statutes require the agent to file and/or give notice to the state or educational institution whenever the agent executes a contract with, or otherwise contacts, an athlete.⁶⁴ Again, Appendix B summarizes the most common registration and reporting requirements contained within the athlete agent statutes.⁶⁵

D. Escaping Athlete Agent Regulation: Loopholes and Constitutional Defects Based on Tri-Parte Classification of Athletes

Far too many jurisdictional and constitutional defects surface in the athlete agent statutes to warrant a detailed discussion. Some defects readily emerge from a superficial reading of the statutes. More frequently,

59. See *id.* at 461 n.171 (citing Robert P. Garbarino, *So You Want To Be A Sports Lawyer, Or Is It A Player Agent, Player Representative, Sports Agent, Contract Advisor, Family Advisor or Contract Representative?*, 1 VILL. SPORTS & ENT. L.F. 11, 32 (1994)).

60. See e.g., ALA. CODE § 8-26-14 (WESTLAW through 1999 Reg. Sess.).

61. See Remis, *Registration and Reporting*, *supra* note 9, at Part IV.

62. See *supra* note 54 and accompanying text. See also *infra* Appendix C.

63. See Remis, *Registration and Reporting*, *supra* note 9, at Part IV.

64. See *supra* notes 11-13 and the referenced articles.

65. See generally Remis, *Registration and Reporting*, *supra* note 9, analyzing the numerous registration requirements.

however, a rigorous and thorough reading must occur before the defects reveal themselves.⁶⁶ The agent must carefully analyze the definitions sections, and combine them with the remaining statutory provisions, to detect the loopholes and other defects. The defects become more obvious when athletes are separated into a tri-partite classification system.⁶⁷ The tri-partite classification of athletes is not explicitly set forth in any particular statute. When one reads the statutes carefully, however, a tri-partite classification of athletes emerges. In other words, state legislatures (“sub-consciously” or more likely “unconsciously”) divide athletes based on the following three characteristics:

1. Professional status (i.e., professional, student and/or amateur athletes);

2. State of residency of the athlete (i.e., in-state or out-of-state resident athletes); and

3. Location of the institution of higher education attended by the athlete (i.e., in-state and/or out-of-state institutions).⁶⁸

Depending upon the category in which a particular athlete falls, the civil and criminal consequences to the athlete agent for his actions (and in some states the athletes as well) vary widely.⁶⁹ Nonetheless, the vagueness and overbreadth doctrines, together with due process and jurisdictional principles, provide much needed relief to athlete agents; the athlete agent statutes clearly contain numerous constitutional defects.⁷⁰ Even so, the courts will eventually need to rule on this issue in each state. Further, many statutory loopholes are a result of the unartfully drafted language that frequently surfaces in the athlete agent statutes.⁷¹

E. Athlete Agent Solicitation, Gifts and Contracts

The last three articles of this series analyzed those statutory provisions that restrict the way that athlete agents may communicate with, or otherwise contact, an athlete, including solicitation of athlete clients, providing gifts and loans to athletes, and executing contracts with athletes.⁷² These articles recently appeared in print and not much legislation has been passed affecting their substance.⁷³ In fact, only

66. See generally Remis and Sudia, *Escaping Athlete Agent Regulation*, *supra* note 10.

67. See *id.* at Parts II.D-E.

68. See *id.*

69. See generally Remis and Sudia, *Escaping Athlete Agent Regulation*, *supra* note 10.

70. See *id.*

71. See *id.*

72. See *supra* notes 11-13 and the referenced articles.

73. See *id.*

Florida and Georgia passed amendments since publication of the articles. The Florida amendment addresses penalties for athlete agents making illegal inducements to athletes.⁷⁴ The Georgia amendment is more extensive and covers several subject areas, including matters addressed by all three articles.⁷⁵ Other rules can affect athlete agents, such as players' association regulations.⁷⁶ Also, if the agent is an attorney, state bar ethical rules will also generally restrict solicitation of athlete clients.⁷⁷

F. Agent Advertisements and Misrepresentations

Nineteen athlete agent statutes contain provisions regulating the content of certain agent communications or advertisements directed to athletes.⁷⁸ All nineteen statutes contain general provisions that prohibit agents from publishing (or causing to be published) any false, fraudulent, or misleading information or advertisement.⁷⁹ Further, statutes specifically prohibit agents from making false representations to athletes or other persons concerning employment or financial services.⁸⁰ Some statutes specifically require agents to place certain designated information on all advertisements, letterheads, notices, and receipts.⁸¹ This information ranges in content, but generally includes the agent's name, business address, and/or agent license number.⁸² Appendix E sets forth the substance of the statutory provisions regarding misrepresentations and advertisements. Appendix F summarizes the information by category to demonstrate statistically which athlete agent statutes contain the respective types of provisions.

The importance of the misrepresentation and advertisement provisions lies in the fact that violation of these provisions carries civil, administrative and/or criminal liability in the various states.⁸³ In other words, the injured party or state need not rely solely on the common law of

74. See FLA. STAT. ANN. §§ 468.451 to .457 (WESTLAW through 2000 1st Reg. Sess.).

75. See GA. CODE ANN. §§ 43-4A-1 to -19 (WESTLAW through 2000 Gen. Ass.).

76. See Remis, *Registration and Reporting*, *supra* note 9, at Part V analyzing the scope of players' association regulations and how they comport or conflict with state athlete agent statutes.

77. See generally Sudia and Remis, *Agent Solicitation*, *supra* note 11.

78. See *supra* note 2; see also *infra* Appendices E and F (Alabama, Arizona, California, Connecticut, Florida, Georgia, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Nevada, North Carolina, North Dakota, Oklahoma, South Carolina, Tennessee, and Texas).

79. See *supra* note 2.

80. See *infra* Appendices E and F.

81. See *id.*

82. See *id.*

83. See discussion *supra* Part II.B.

misrepresentation, which often can be difficult to prove.⁸⁴ Thus, the plaintiff's burden of proof eases because to prove misrepresentation, the plaintiff must only prove the falsity of the statement and that the advertisement violated the statute. The statutes generally make no reference to "detrimental reliance," which is often required for common law misrepresentation.⁸⁵ Additionally, otherwise seemingly harmless advertisements, letterhead, business cards, and receipts could subject the agent to civil or criminal liability – even though the NCAA does not regulate such agent conduct or materials.⁸⁶ For example, in some states, merely failing to include the agent's permit number on an advertisement can subject an agent to liability.⁸⁷

III. UNIFORM ATHLETE AGENTS ACT (UAA)

As noted *supra*, the NCCUSL recently gave final approval to its uniform law regarding regulation of athlete agents (UAA).⁸⁸ The title page of the UAA states that the NCCUSL recommends enactment of the UAA in all states (not just those states currently with or without athlete agent legislation).⁸⁹ Particularly, the UAA envisions that states currently with athlete agent legislation will repeal those laws and adopt the UAA in place of the repealed statutes.⁹⁰ Obviously, as with all uniform laws, the NCCUSL's intent behind enactment strives to standardize the extremely varied and complicated legislation that currently exists in twenty-eight states.⁹¹ Although the text of the UAA does not specifically state its purpose or goals, a reading of the text clearly reveals that the NCCUSL seeks to encourage agents to voluntarily comply with the UAA's requirements. This encouragement stems from the UAA's provisions envisioning reciprocity among sister states. In particular, the UAA contains provisions allowing for a slim-lined registration procedure for

84. See generally Remis, *Remedies and Penalties*, *supra* note 8. Of course, the athlete agent statutory remedies would be in addition to, and would not supercede, common law causes of action against the athlete agent. Thus, athlete agents could be sued under both statutory and common law causes of action.

85. See *infra* Appendix E for a paraphrased text of the statutes.

86. See discussion *supra* Part II.A, regarding the NCAA's lack of jurisdiction over, and thus non-regulation of, athlete agents.

87. Florida and Tennessee require the agent to include her permit or license number in advertisements. See FLA. STAT. ANN. § 468.456 (WESTLAW through 2000 1st Reg. Sess.); TENN. CODE ANN. § 49-7-2114 (West, WESTLAW through 1999 Reg. Sess.). See also *infra* Appendices E and F.

88. See *supra* notes 14-15 and accompanying text.

89. See *id.*

90. See UNIF. ATHLETE AGENTS ACT at §§ 18 and 21.

91. See at § 18; see also *supra* note 2.

athlete agents who already registered in another state within the prior six months.⁹² Further, the UAA envisions different fees for: (1) *initial registration* versus subsequent *renewal*, and (2) *original registration* versus *reciprocal registration* based on prior registration in another state.⁹³ Breaking fees down in this fashion evidences an obvious intent for states to require lower fees for renewal licenses and licenses issued under reciprocity, because the state of original or initial issuance would incur far more expenses when initially investigating an applicant's background for fitness to serve as a licensed athlete agent.⁹⁴

Regarding penalties, the UAA contemplates criminal liability for athlete agents (but not for athletes) and includes a provision to this effect.⁹⁵ The UAA, however, allows each state to determine if the crime constitutes a felony or misdemeanor.⁹⁶ The UAA also provides for administrative penalties against agents, but again not against athletes.⁹⁷ In striking contrast, the UAA seeks to impose civil remedies against both athlete agents and athletes.⁹⁸

Thus, the UAA proves fairly similar to athlete agent legislation already existing in the twenty-eight states. The UAA's primary benefit lies not in any type of "uniqueness," but rather, in its nationwide uniformity.⁹⁹ Reciprocity will prove beneficial only if sister states act together so that agents need not pay enormous registration and renewal fees or complete numerous detailed, complicated registration, and renewal application forms.¹⁰⁰ Only time will tell if all states will adopt the UAA.¹⁰¹ The advisability for adopting the UAA does not differ from the advisability for adopting any legislation on this matter. For example, it remains open for debate whether the state should send an athlete agent to jail for buying an athlete a stadium hotdog or for the athlete to eat that stadium hotdog (much less to enjoy it).¹⁰²

92. See UNIF. ATHLETE AGENTS ACT at §§ 5-6.

93. See *id.* at § 9.

94. See *supra* Part II.C, regarding how registration fees can become cost prohibitive for athlete agents to comply.

95. See UNIF. ATHLETE AGENTS ACT at § 15.

96. See *id.*

97. See *id.* at § 17.

98. See UNIF. ATHLETE AGENTS ACT at § 16.

99. See *supra* notes 92-94 and accompanying text.

100. See *supra* Part II.C for an analysis of the burdensome registration and reporting requirements imposed on an annual or biannual basis in several states.

101. See 2000 WV H.B. 4037 (75th Legislature). West Virginia introduced a bill on January 13, 2000, several months before the NCCUSL approved the UAA in final form in August. The West Virginia legislature subsequently adjourned with no carryover of the bill. *Id.*

102. See *supra* Part II.B.

IV. CONCLUSION

This article, and the prior six articles in this series, provide a detailed analysis of an extremely complicated and confusing area of state legislation: the regulation of athlete agents.¹⁰³ As evidenced by this seven-article analysis of the athlete agent legislation currently in existence in twenty-eight states, each state's legislation proves extremely diverse in substance and result. This is true even though a reading of some statutes demonstrates that other states "copied" or "followed" the legislation previously enacted in sister states.¹⁰⁴

The current legislation often results in undesirable consequences from both the agent's and legislature's perspective. More often, the consequences prove not only undesirable, but quite incomprehensible, illogical, and bizarre. For example, the athlete agent legislation often results in mandates that conflict with the NCAA's regulations governing collegiate athletics.¹⁰⁵ When this happens, the legislatures defeat the very purpose for which they enacted the legislation. From the agent's point of view, the athlete agent legislation remains far too vague, overly burdensome, and cost and time prohibitive. In turn, agents are discouraged from complying with the legislation - again defeating the very purpose of the legislation.¹⁰⁶

If a court eventually deems the athlete agent legislation unconstitutional (at least in part), the agents will not have to comply. Even if the legislation proves constitutional in the end, the current agent non-compliance by itself shows that the laws are not working well.¹⁰⁷ Unless the state has the resources to locate non-complying agents and then criminally prosecute or administratively charge them, the statute worthlessly sits on the legislative shelves. In time, if the NCAA deregulates amateurism and eventually allows the use of athlete agents, the need for athlete agent legislation would diminish substantially (assuming, of course, that there is a need for it at all).¹⁰⁸ If, after deregulation, an

103. See *supra* notes 8-13 and accompanying text.

104. See *infra* Appendices E and F. A simple review of Appendices E and F reveals the "copying" or "following" of sister states' legislation. The use by several states of the terms "cards," "circulars," "signs," "newspapers," "letterheads," "receipts," "blanks," etc. when regulating athlete agent advertisements and misrepresentations proves that states have very similar provisions that could not have resulted through mere chance. *Id.*

105. See Sudia and Remis, *Agent Gifts to Athletes*, *supra* note 12, at Part II.B.3 (regarding the explicit statutory approval by Louisiana and other states of agent gifts to athletes—all in direct violation of NCAA regulations).

106. See *infra* Appendix C (regarding agent non-compliance with athlete agent legislation).

107. See *id.*

108. See *supra* notes 26-27, 102 and accompanying text.

athlete agent can still cause an NCAA institution to lose a multi-million payout from a lost bowl or television opportunity, the need for the legislation (or at least parts of it) would arguably still exist. Until that day arrives, however, the state of athlete agent legislation will likely remain ambiguous and tenuous at best.

V. POST-SCRIPT

As this article went to press, several state legislators swiftly began introducing legislation to adopt the UAA. Some states are among the 28 states discussed in this article, but not all 28 states have yet done so (e.g., Colorado). In addition, some states that were not among the 28 states with legislation on the books have also moved to adopt the UAA (e.g., New York). In particular, at least eight states have now adopted the UAA¹⁰⁹ and another eighteen states have legislation pending.¹¹⁰

The authors and editorial board felt it was best to leave the article as is (with this post-script added as a caution to the reader) since this article is the only article in existence that provides an in-depth status of athlete agent legislation immediately prior to passage of the UAA. That way, a comparative analysis can be accomplished in future years after the various states have adopted the UAA (in whole or in part, including which states adopt items such as the criminal liability provisions) and after the NCAA finally decides what it will ultimately accomplish on the issue of deregulation of amateurism. Further, this analysis might also be especially helpful in the event that the UAA does not work out as planned in the states adopting the UAA (e.g., some states might not want to criminally punish agents).

In the meantime, an athlete agent reading this article should note that the appendices reflect pre-UAA status. In the event that the reader desires to know the status of any state adopting the UAA, the reader should obtain a copy of the statute and consult the UAA columns of the appendices to this article.

109. Eight states to adopt the UAA are: Alabama, Arizona, Arkansas, Idaho, Indiana, Mississippi, Utah, and West Virginia.

110. The eighteen states that have legislation pending are: California, Connecticut, Delaware, District of Columbia, Florida, Illinois, Iowa, Michigan, Missouri, Nebraska, Nevada, New Mexico, New York, Rhode Island, South Carolina, Tennessee, Texas, and Washington.

APPENDIX "A"
STATUTORY IMPOSITION OF CIVIL AND CRIMINAL LIABILITY OF ATHLETE AGENTS AND ATHLETES
As Expressly Enumerated in Athlete Agents Statutes

STATUTORY CIVIL AND CRIMINAL PENALTIES	A L	A Z	A R	C R	C O	C T	F L	G A	I N	I A	K S	L A	M D	M I	M N	M S	N O	N V	N C	O D	O H	O K	O R	P A	S C	S N	T A	T X	U A
CIVIL PENALTIES:																													
1. Actual Damages	X	X	X	X	X		X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
2. Court Costs	X		X	X	X		X	X		X	X	X	X	X	X	X		X	X		X	X					X	X	X
3. Attorney Fees	X		X	X	X		X	X		X	X	X	X	X	X	X		X	X		X	X					X	X	X
4. Punitive Damages	X			X	X		X	X		X	X												X				X	X	
5. Treble Damages							X							X	X								X			X	X		
6. Equitable / Administrative (General / Injunction)			X		X	X	X			X										X	X	X						X	
a. Agent contract deemed void	X	X	X	X			X	X		X	X	X			X	X	X		X	X		X	X			X	X	X	X
b. Agent contract deemed voidable					X							X	X					X											X
i. Rescission Deadline for athlete	X		X	X	X	X	X	X		X	X	X			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
c. Denial / Suspension / Revocation of License	X		X	X		X	X	X		X	X	X	X		X	X	X		X	X	X	X	X	X	X	X	X	X	X
d. Forfeiture of surety bond / Insurance coverage	X		X	X			X	X		X	X				X		X		X	X	X	X	X	X	X	X	X	X	X
e. Forfeiture of right to repayment		X	X	X	X		X	X		X	X	X			X	X	X	X	X	X	X	X	X			X	X	X	X
f. Refund consideration paid on athlete's behalf			X	X						X	X	X	X		X	X	X	X	X	X	X	X						X	X
g. Civil / Administrative fines				X	X	X	X	X		X	X			X			X	X	X	X	X	X	X	X	X	X	X	X	X
CRIMINAL PENALTIES (Prison and/or Fine):																													
1. Felony	X		X				X	X	X		X				X		X					X			X	X	X	X	X
2. Misdemeanor	X	X		X		X				X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X
PENALTIES AGAINST ATHLETE:																													
1. Civil / Administrative	X	X	X				X			X	X	X	X		X	X						X			X	X	X	X	
2. Criminal	X									X	X	X			X								X			X	X		

X = Specifically enumerated provision located within the athlete agent statute. UAA = UNIFORM ATHLETE AGENTS ACT

CAVEAT: See *supra*, note 17, regarding how to Interpret Appendix A.

APPENDIX "C"
NUMBER OF ATHLETE AGENTS REGISTERED IN STATES THAT REQUIRE AGENT REGISTRATION †

AL	AR	CA	CT	FL	GA	IA	KS	KY	LA	MD	MS	MO	NC	OK	OR	PA	SC	TN	TX
188	8	‡	2	156	50	1	4	27	22	8	29	15	87	2	‡	150	60	101	80

† = The information for this chart was obtained from the NCAA Official Website on 10/23/00. The website indicates that its information was current as of Summer 2000 (with most information obtained by the NCAA in July or August, 2000).

‡ = State requires registration but NCAA did not have registration information on website.

States With Athlete Agent Statutes But Not Requiring Agent Registration = AZ, CO, IN, MI, MN, NV, ND, OH

APPENDIX "D"
STATE CONTACT INFORMATION REGARDING ATHLETE AGENT STATUTES *

STATE	PHONE NUMBER	STATE	PHONE NUMBER
AL	334-242-7591	MN	612-297-5845
AZ	602-542-3701	MS	601-359-1604
AR	501-682-5070	MO	573-751-3200
CA	916-653-4984	NV	702-486-3103
CO	303-866-2723	NC	919-807-2156
CT	860-566-5130	ND	701-328-2210
FL	850-488-7587	OH	330-742-5120
GA	912-207-1460	OK	405-522-4560
IN	317-232-9856	OR	888-838-6722
IA	515-242-5071	PA	717-787-5720
KS	785-296-2034	SC	803-734-4235
KY	502-564-3296, ext. 230	TN	615-253-4587
LA	225-342-2221	TX	512-475-1769
MD	410-230-6224		
MI	517-373-1110	NCCUSL	312-915-0195

* = The information for this chart was obtained from the NCAA Official Website on 10/23/00. The website indicates that its information was current as of Summer 2000 (with most information obtained by the NCAA in July or August, 2000).

NCCUSL = National Conference of Commissioners on Uniform State Laws
(Drafted the Uniform Athlete Agents Act)

APPENDIX "E"
STATUTORY REGULATION OF AGENT
ADVERTISEMENTS AND MISREPRESENTATIONS

As Paraphrased From Expressly Enumerated Provisions in Athlete Agent Statutes

ALABAMA

Advertisements and Misrepresentation [Ala. Code §§ 8-26-7, -33 (WESTLAW through 1999 Reg. Sess.)]

1. No athlete agent may publish (or cause to be published) any false, fraudulent or misleading information, representation, notice or advertisement.
 2. All advertisements of an athlete agent (in cards, circulars, signs, newspapers or other publications), and all letterheads, receipts and blanks, must:
 - a. Be printed; and
 - b. Contain:
 - i. The registered name and address of the athlete agent; and
 - ii. A notation signifying that the athlete agent is either:
 - a) A licensed attorney engaged in the practice of law; or
 - b) If the athlete agent is not an attorney, is involved in the representation of athletes.
 3. No athlete agent may give any false information or make any false promises or representations:
 - a. To a student athlete concerning employment or financial services; or
 - b. Concerning any employment to any athlete.
 4. No athlete agent may fail to include the agent's name in any advertising relating to the business of an athlete agent.
 5. Advertising does not include:
 - a. Clothing; or
 - b. Novelty items.
-

ARIZONA

Advertisements and Misrepresentations [Ariz. Rev. Stat. Ann. § 15-1762 (West, WESTLAW through 1999 1st Reg. Sess. and 2d Special Sess.)]

1. An athlete agent may not:
 - a. Publish (or cause to be published) any false, fraudulent or misleading information, representation, notice or advertisement concerning the business of an athlete agent; or
 - b. Give any false information or make any false promises or representations concerning the business of an athlete agent.
2. An athlete agent may not give any false information or make any false promises to an athlete concerning employment. 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.

ARKANSAS

*

CALIFORNIA

Advertisements and Misrepresentations [Cal. Bus. and Prof. Code §§ 18897.37, -.4 (West 1999)]

1. No athlete agent (or athlete agent's representative or employee) may:
 - a. Publish (or cause to be published) any false, fraudulent or misleading information, representation, notice or advertisement; or
 - b. Give any false information or make any false promises or representations concerning any employment to any person.
 2. All forms of advertising used by an athlete agent must include the name and business address of the athlete agent.
-

COLORADO

*

CONNECTICUT

Advertisements and Misrepresentations [Conn. Gen. Stat. Ann. §§ 20-555, -556 (West 1999)]

1. An athlete agent may not:
 - a. Publish (or cause to be published) any false, fraudulent or misleading information, representation, notice or advertisement; or
 - b. Give any false information or make any false promises or representations to any person concerning any employment.
 2. The Commissioner of Consumer Protection must adopt regulations to establish requirements for the regulation of athlete agents, including limitations and conditions on athlete agent advertising.
-

FLORIDA

Advertisements and Misrepresentations [Fla. Stat. Ann. § 468.456 (WESTLAW through 2000 1st Reg. Sess.)]

1. An athlete agent may not:
 - a. Fail to include the athlete agent's name and license number in any advertising related to the business of the athlete agent;
 - b. Publish (or cause to be published) false or misleading information or advertisements; or
 - c. Give any false information or make false promises to a student athlete concerning employment or financial services.
 2. Advertising does not include:
 - a. Clothing; or
 - b. Novelty items.
-

GEORGIA

Advertisements and Misrepresentations [Ga. Code Ann. § 43-4A-7 (WESTLAW through 2000 Gen. Ass.)]

1. An athlete agent may not:
 - a. Make a material false, misleading, deceptive, untrue or fraudulent representation as an athlete agent (or in any document connected therewith); or
 - b. Practice fraud or deceit.
-

INDIANA

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IOWA

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KANSAS

Advertisements and Misrepresentations [Kan. Stat. Ann. § 44-1508 (WESTLAW through 1998 Reg. Sess.)]

1. In all forms of advertising used by an athlete agent, the agent must disclose the name and address of the agent.
 2. An athlete agent may not:
 - a. Publish (or cause to be published) any false, fraudulent or misleading information, representation, notice or advertisement; or
 - b. Give any false information or make any false promises or representations concerning any employment to any person.
-

KENTUCKY**Advertisements and Misrepresentations [Ky. Rev. Stat. Ann. § 164.683 (Michie, WESTLAW through 1998 Reg. Sess.)]**

1. An athlete agent may not:
 - a. Publish (or cause to be published) any false or misleading information or advertisements;
 - b. Give any false information or make any false promises to a student athlete concerning employment or financial services; or
 - c. Fail to include the agent's name in any advertising relating to the business of an athlete agent.
 2. Advertising does not include:
 - a. Clothing; or
 - b. Novelty items.
-

LOUISIANA**Advertisements and Misrepresentations [La. Rev. Stat. Ann. § 4:424 (West, WESTLAW through 1999 Reg. Sess.)]**

1. An athlete agent may not:
 - a. Publish (or cause to be published) any false, fraudulent or misleading information, representation, notice or advertisement;
 - b. Advertise (in cards, circulars, signs, newspapers or other publications), or use letterheads, receipts or blanks unless the advertisement, letterhead, receipt or blank is:
 - i. Printed; and
 - ii. Contains the registered name and address of the athlete agent;
 - c. Intentionally give any false information or intentionally make any false promises or representations to any athlete (or the athlete's parents, legal guardians or other advisors); or
 - d. Fail to disclose that he is employed by, or acting on behalf of, someone else.
-

MARYLAND**Advertisements and Misrepresentations [Md. Code Ann. Bus. Reg. §§ 4-417, -422 (WESTLAW through 1999 Reg. Sess.)]**

1. A sports agent must disclose the name and address of the sports agent in all advertising.
 2. A sports agent may not:
 - a. Publish (or cause to be published) any false or misleading information; or
 - b. Give any false promise about employment.
-

MICHIGAN

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MINNESOTA

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MISSISSIPPI**Advertisements and Misrepresentations [Miss. Code Ann. § 73-41-11 (1999)]**

1. An athlete agent may not:
 - a. Publish (or cause to be published) any false, fraudulent or misleading information, representation, notice or advertisement;
 - b. Advertise (in cards, circulars, signs, newspapers or other publications) or use letterheads, receipts or blanks, unless the advertisement, letterhead, receipt or blank is:
 - i. Printed; and
 - ii. Contains the registered name and address of the athlete agent.
2. An athlete agent may not intentionally give any false information or make any false promises or representations to any Mississippi NCAA athlete.

MISSOURI**Advertisements and Misrepresentations [Mo. Ann. Stat. § 436.212 (West 1997)]**

1. An athlete agent may not:
 - a. Publish (or cause to be published) false or misleading information or advertisements; or
 - b. Give any false information or make false promises to a student athlete concerning employment.

NEVADA**Advertisements and Misrepresentations [Nev. Rev. Stat. Ann. § 597.920 (Michie, WESTLAW through 1997 Reg. Sess.)]**

1. A sports agent may not:
 - a. Publish any false, fraudulent or misleading advertisement, representation, notice or other information; or
 - b. Give to any person any false information or make any false promises or representations concerning employment.

NORTH CAROLINA**Advertisements and Misrepresentations [N.C. Gen. Stat. § 78C-76 (Michie, WESTLAW through 1998 Cum. Supp.)]**

1. In all forms of advertising used by the athlete agent, the agent must disclose the name and address of the agent.
 2. An athlete agent may not:
 - a. Publish (or cause to be published) any false, fraudulent or misleading information, representation, notice or advertisement; or
 - b. Give any false information or make any false promises or representations concerning any employment to any person.
-

NORTH DAKOTA**Advertisements and Misrepresentations [N.D. Cent. Code § 9-15-04 (WESTLAW through 1999 Reg. Sess.)]**

1. In all forms of advertising used by the athlete agent, the athlete agent must disclose the name and address of the agent.
 2. An athlete agent may not:
 - a. Publish (or cause to be published) any false or misleading information; or
 - b. Give any false information or make any false promises or representations concerning any employment to any person.
-

OHIO

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OKLAHOMA**Advertisements and Misrepresentations [Okla. Stat. Ann. Tit. 70, § 821.64 (West 1997)]**

1. A registered athlete agent may not:
 - a. Publish (or cause to be published) any false, fraudulent or misleading information, representation, notice or advertisement; or
 - b. Give any false information or make any false promises or representations concerning any employment to any person.
2. An athlete agent may not advertise (in cards, circulars, signs, newspapers or other publications) or use letterheads, receipts or blanks unless the advertisement, letterhead, receipt or blank:
 - a. Is printed; and

- b. Contains the registered name and address of the athlete agent.

OREGON

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PENNSYLVANIA

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SOUTH CAROLINA

Advertisements and Misrepresentations [S.C. Code Ann. § 59-102-40 (Law. Co-op., WESTLAW through 1999 Reg. Sess.)]

1. An agent may not:
 - a. Publish (or cause to be published) false or misleading information or advertisements; or
 - b. Give any false information or make false promises to an athlete concerning employment.

TENNESSEE

Advertisements and Misrepresentations [Tenn. Code Ann. § 49-7-2114 (West, WESTLAW through 1999 Reg. Sess.)]

1. A sports agent may not:
 - a. Fail to include the sports agent's name and permit number in any advertising related to the business of a sports agent.
 - b. Publish (or cause to be published) false or misleading information or advertisements; or
 - c. Give any false information or make false promises to a student athlete concerning employment or financial services.
2. Advertising does not include:
 - a. Clothing; or
 - b. Novelty items.

TEXAS

Advertisements and Misrepresentations [Tex. Occ. Code Ann. §§ 2051.351, -.353 (West, WESTLAW through 1999 Reg. Sess.)]

1. In all forms of advertising used by the athlete agent, the agent must disclose the

- name and address of the agent.
2. An athlete agent may not:
 - a. Publish (or cause to be published) any false, fraudulent, or misleading information, representation, notice or advertisement; or
 - b. Give any false information or make any false promises or representations relating to any employment.
-

* = Not Enumerated In Athlete Agent Statute

CAVEAT: Please note the following to properly interpret Appendix E:

1. Appendix E includes only those statutory provisions regulating advertising and other representations by persons properly conducting business as athlete agents.
2. Appendix E does not include the statutory provisions prohibiting a person from conducting business as an athlete agent (including advertising or otherwise holding oneself out as an athlete agent) until the athlete registers with the state. Instead, Appendix E deals with regulated advertising and representations by properly registered agents. For a detailed analysis of the many states that require agents to undergo licensure or registration prior to advertising services or otherwise conducting business as an athlete agent, and the requirements and prohibitions pertaining thereto, *see generally* Remis, *Registration and Reporting*, *supra* note 9.
3. Also beyond the scope of this Appendix are those statutory provisions prohibiting the making of false representations to the state in an application for (or renewal of) an athlete agent license or permit. For a detailed analysis of the many states that require agents to undergo licensure or registration, and the requirements and prohibitions pertaining thereto, *see id.*
4. 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 10.

APPENDIX "F"
STATUTORY REGULATION OF ATHLETE AGENT ADVERTISEMENTS AND MISREPRESENTATIONS
 As Expressly Enumerated in Athlete Agents Statutes

STATUTORY CIVIL AND CRIMINAL PENALTIES	A	A	A	C	C	F	G	I	K	K	L	M	M	M	M	N	N	N	O	O	O	P	S	T	T	U			
	L	Z	R	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	A
PROHIBITED MISREPRESENTATIONS:																													
1. General prohibition against misrepresentations	X	X		X		X	X	X		X	X	X	X		X	X	X	X	X	X		X			X	X	X		
2. Misrepresentations concerning employment	X	X		X		X	X			X	X	X						X	X	X	X		X			X	X	X	
3. Misrepresentations concerning financial services	X					X					X																	X	
4. Misrepresentations to induce agent contract																													X
REQUIREMENTS FOR ADVERTISEMENTS																													
1. Must be printed	X										X				X							X							
2. Must include agent's name	X			X		X			X	X	X	X		X			X	X	X	X		X			X	X			
3. Must include agent's address	X			X					X		X	X		X			X	X	X	X		X				X			
4. Must include agent's license number						X																					X		
5. Must include notation that agent = attorney or agent	X										X																		
SPECIFIC TYPES OF ADVERTISEMENTS:																													
1. Letterhead	X										X			X								X							
2. Receipts / Blanks	X										X			X								X							
3. Business cards	X										X			X								X							
4. Circulars	X										X			X								X							
5. Signs	X										X			X								X							
6. Newspapers	X										X			X								X							
7. Other publications / Any advertisements	X	X		X		X	X	X		X	X	X	X		X	X	X	X	X	X		X			X	X	X		
EXEMPTIONS FROM AD REQUIREMENTS:																													
1. Clothing	X					X				X																	X		
2. Novelty items	X					X				X																	X		

X = Specifically enumerated provision located within the athlete agent statute. UAA = UNIFORM ATHLETE AGENTS ACT
CAVEAT: See *supra* Appendix E, regarding how to interpret Appendix E and thus Appendix F.