

108TH CONGRESS
1ST SESSION

S. 1170

To designate certain conduct by sports agents relating to the signing of contracts with student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission.

IN THE SENATE OF THE UNITED STATES

JUNE 3, 2003

Mr. WYDEN introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To designate certain conduct by sports agents relating to the signing of contracts with student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Sports Agent Respon-
5 sibility and Trust Act”.

6 **SEC. 2. DEFINITIONS.**

7 As used in this Act, the following definitions apply:

1 (1) AGENCY CONTRACT.—The term “agency
2 contract” means an oral or written agreement in
3 which a student athlete authorizes a person to nego-
4 tiate or solicit on behalf of the student athlete a pro-
5 fessional sports contract or an endorsement contract.

6 (2) ATHLETE AGENT.—The term “athlete
7 agent” means an individual who enters into an agen-
8 cy contract with a student athlete, or directly or in-
9 directly recruits or solicits a student athlete to enter
10 into an agency contract, and does not include a
11 spouse, parent, sibling, grandparent, or guardian of
12 such student athlete, any legal counsel for purposes
13 other than that of representative agency, or an indi-
14 vidual acting solely on behalf of a professional sports
15 team or professional sports organization.

16 (3) ATHLETIC DIRECTOR.—The term “athletic
17 director” means an individual responsible for admin-
18 istering the athletic program of an educational insti-
19 tution or, in the case that such program is adminis-
20 tered separately, the athletic program for male stu-
21 dents or the athletic program for female students, as
22 appropriate.

23 (4) COMMISSION.—The term “Commission”
24 means the Federal Trade Commission.

1 (5) ENDORSEMENT CONTRACT.—The term “en-
2 dorsement contract” means an agreement under
3 which a student athlete is employed or receives con-
4 sideration for the use by the other party of that in-
5 dividual’s person, name, image, or likeness in the
6 promotion of any product, service, or event.

7 (6) INTERCOLLEGIATE SPORT.—The term
8 “intercollegiate sport” means a sport played at the
9 collegiate level for which eligibility requirements for
10 participation by a student athlete are established by
11 a national association for the promotion or regula-
12 tion of college athletics.

13 (7) PROFESSIONAL SPORTS CONTRACT.—The
14 term “professional sports contract” means an agree-
15 ment under which an individual is employed, or
16 agrees to render services, as a player on a profes-
17 sional sports team, with a professional sports organi-
18 zation, or as a professional athlete.

19 (8) STATE.—The term “State” includes a State
20 of the United States, the District of Columbia, Puer-
21 to Rico, the United States Virgin Islands, or any
22 territory or insular possession subject to the jurisdic-
23 tion of the United States.

24 (9) STUDENT ATHLETE.—The term “student
25 athlete” means an individual who engages in, is eli-

1 gible to engage in, or may be eligible in the future
 2 to engage in, any intercollegiate sport. An individual
 3 who is permanently ineligible to participate in a par-
 4 ticular intercollegiate sport is not a student athlete
 5 for purposes of that sport.

6 **SEC. 3. REGULATION OF UNFAIR AND DECEPTIVE ACTS**
 7 **AND PRACTICES IN CONNECTION WITH THE**
 8 **CONTACT BETWEEN AN ATHLETE AGENT AND**
 9 **A STUDENT ATHLETE.**

10 (a) CONDUCT PROHIBITED.—It is unlawful for an
 11 athlete agent to—

12 (1) directly or indirectly recruit or solicit a stu-
 13 dent athlete to enter into an agency contract, by—

14 (A) giving any false or misleading informa-
 15 tion or making a false promise or representa-
 16 tion; or

17 (B) providing anything of value to a stu-
 18 dent athlete or anyone associated with the stu-
 19 dent athlete before the student athlete enters
 20 into an agency contract including any consider-
 21 ation in the form of a loan, or acting in the ca-
 22 pacity of a guarantor or co-guarantor for any
 23 debt;

24 (2) enter into an agency contract with a stu-
 25 dent athlete without providing the student athlete

1 with the disclosure document described in subsection
2 (b); or

3 (3) predate or postdate an agency contract.

4 (b) REQUIRED DISCLOSURE BY ATHLETE AGENTS
5 TO STUDENT ATHLETES.—

6 (1) IN GENERAL.—In conjunction with the en-
7 tering into of an agency contract, an athlete agent
8 shall provide to the student athlete, or, if the stu-
9 dent athlete is under the age of 18 to such student
10 athlete’s parent or legal guardian, a disclosure docu-
11 ment that meets the requirements of this subsection.
12 Such disclosure document is separate from and in
13 addition to any disclosure which may be required
14 under State law.

15 (2) SIGNATURE OF STUDENT ATHLETE.—The
16 disclosure document must be signed by the student
17 athlete, or, if the student athlete is under the age of
18 18 by such student athlete’s parent or legal guard-
19 ian, prior to entering into the agency contract.

20 (3) REQUIRED LANGUAGE.—The disclosure doc-
21 ument must contain, in close proximity to the signa-
22 ture of the student athlete, or, if the student athlete
23 is under the age of 18, the signature of such student
24 athlete’s parent or legal guardian, a conspicuous no-
25 tice in boldface type stating: “Warning to Student

1 Athlete: If you agree orally or in writing to be rep-
2 resented by an agent now or in the future you may
3 lose your eligibility to compete as a student athlete
4 in your sport. Within 72 hours after entering into
5 this contract or before the next athletic event in
6 which you are eligible to participate, whichever oc-
7 curs first, both you and the agent by whom you are
8 agreeing to be represented must notify the athletic
9 director of the educational institution at which you
10 are enrolled, or other individual responsible for ath-
11 letic programs at such educational institution, that
12 you have entered into an agency contract.”.

13 **SEC. 4. ENFORCEMENT.**

14 (a) UNFAIR OR DECEPTIVE ACT OR PRACTICE.—A
15 violation of this Act shall be treated as a violation of a
16 rule defining an unfair or deceptive act or practice pre-
17 scribed under section 18(a)(1)(B) of the Federal Trade
18 Commission Act (15 U.S.C. 57a(a)(1)(B)).

19 (b) ACTIONS BY THE COMMISSION.—The Commis-
20 sion shall enforce this Act in the same manner, by the
21 same means, and with the same jurisdiction, powers, and
22 duties as though all applicable terms and provisions of the
23 Federal Trade Commission Act (15 U.S.C. 41 et seq.)
24 were incorporated into and made a part of this Act.

1 **SEC. 5. ACTIONS BY STATES.**

2 (a) IN GENERAL.—

3 (1) CIVIL ACTIONS.—In any case in which the
4 attorney general of a State has reason to believe
5 that an interest of the residents of that State has
6 been or is threatened or adversely affected by the
7 engagement of any athlete agent in a practice that
8 violates section 3 of this Act, the State may bring
9 a civil action on behalf of the residents of the State
10 in a district court of the United States of appro-
11 priate jurisdiction to—

12 (A) enjoin that practice;

13 (B) enforce compliance with this Act; or

14 (C) obtain damage, restitution, or other
15 compensation on behalf of residents of the
16 State.

17 (2) NOTICE.—

18 (A) IN GENERAL.—Before filing an action
19 under paragraph (1), the attorney general of
20 the State involved shall provide to the Commis-
21 sion—

22 (i) written notice of that action; and

23 (ii) a copy of the complaint for that
24 action.

25 (B) EXEMPTION.—Subparagraph (A) shall
26 not apply with respect to the filing of an action

1 by an attorney general of a State under this
2 subsection, if the attorney general determines
3 that it is not feasible to provide the notice de-
4 scribed in that subparagraph before filing of the
5 action. In such case, the attorney general of a
6 State shall provide notice and a copy of the
7 complaint to the Commission at the same time
8 as the attorney general files the action.

9 (b) INTERVENTION.—

10 (1) IN GENERAL.—On receiving notice under
11 subsection (a)(2), the Commission shall have the
12 right to intervene in the action that is the subject
13 of the notice.

14 (2) EFFECT OF INTERVENTION.—If the Com-
15 mission intervenes in an action under subsection (a),
16 it shall have the right—

17 (A) to be heard with respect to any matter
18 that arises in that action; and

19 (B) to file a petition for appeal.

20 (c) CONSTRUCTION.—For purposes of bringing any
21 civil action under subsection (a), nothing in this title shall
22 be construed to prevent an attorney general of a State
23 from exercising the powers conferred on the attorney gen-
24 eral by the laws of that State to—

25 (1) conduct investigations;

1 (2) administer oaths or affirmations; or

2 (3) compel the attendance of witnesses or the
3 production of documentary and other evidence.

4 (d) ACTIONS BY THE COMMISSION.—In any case in
5 which an action is instituted by or on behalf of the Com-
6 mission for a violation of section 3, no State may, during
7 the pendency of that action, institute an action under sub-
8 section (a) against any defendant named in the complaint
9 in that action.

10 (e) VENUE.—Any action brought under subsection
11 (a) may be brought in the district court of the United
12 States that meets applicable requirements relating to
13 venue under section 1391 of title 28, United States Code.

14 (f) SERVICE OF PROCESS.—In an action brought
15 under subsection (a), process may be served in any district
16 in which the defendant—

17 (1) is an inhabitant; or

18 (2) may be found.

19 **SEC. 6. PROTECTION OF EDUCATIONAL INSTITUTION.**

20 (a) NOTICE REQUIRED.—Within 72 hours after en-
21 tering into an agency contract or before the next athletic
22 event in which the student athlete may participate, which-
23 ever occurs first, the athlete agent and the student athlete
24 shall each inform the athletic director of the educational
25 institution at which the student athlete is enrolled, or

1 other individual responsible for athletic programs at such
2 educational institution, that the student athlete has en-
3 tered into an agency contract, and the athlete agent shall
4 provide the athletic director with notice in writing of such
5 a contract.

6 (b) CIVIL REMEDY.—

7 (1) IN GENERAL.—An educational institution
8 has a right of action against an athlete agent for
9 damages caused by a violation of this Act.

10 (2) DAMAGES.—Damages of an educational in-
11 stitution may include and are limited to actual
12 losses and expenses incurred because, as a result of
13 the conduct of the athlete agent, the educational in-
14 stitution was injured by a violation of this Act or
15 was penalized, disqualified, or suspended from par-
16 ticipation in athletics by a national association for
17 the promotion and regulation of athletics, by an ath-
18 letic conference, or by reasonable self-imposed dis-
19 ciplinary action taken to mitigate actions likely to be
20 imposed by such an association or conference.

21 (3) COSTS AND ATTORNEYS FEES.—In an ac-
22 tion taken under this section, the court may award
23 to the prevailing party costs and reasonable attor-
24 neys fees.

1 (4) EFFECT ON OTHER RIGHTS, REMEDIES AND
2 DEFENSES.—This section does not restrict the
3 rights, remedies, or defenses of any person under
4 law or equity.

5 **SEC. 7. LIMITATION.**

6 Nothing in the Act shall be construed to prohibit an
7 individual from seeking any remedies available under ex-
8 isting State law or equity.

9 **SEC. 8. SENSE OF CONGRESS.**

10 It is the sense of Congress that States should enact
11 the Uniform Athlete Agents Act of 2000 drafted by the
12 National Conference of Commissioners on Uniform State
13 Laws, to protect student athletes and the integrity of ama-
14 teur sports from unscrupulous sports agents. In par-
15 ticular, it is the sense of Congress that States should enact
16 the provisions relating to the registration of sports agents,
17 the required form of contract, the right of the student ath-
18 lete to cancel an agency contract, the disclosure require-
19 ments relating to record maintenance, reporting, renewal,
20 notice, warning, and security, and the provisions for reci-
21 procity among the States.

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