

CHAPTER 332-J

ATHLETE AGENTS

332-J:1 Definitions. –

In this chapter:

I. "Agency contract" means an agreement in which a student-athlete authorizes a person to negotiate or solicit on behalf of the student-athlete a professional-sports-services contract or an endorsement contract.

II. "Athlete agent" means an individual who enters into an agency contract with a student-athlete or, directly or indirectly, recruits or solicits a student-athlete to enter into an agency contract. The term includes an individual who represents to the public that the individual is an athlete agent. The term does not include a spouse, parent, sibling, or grandparent, or guardian of the student-athlete or an individual acting solely on behalf of a professional sports team or professional sports organization.

III. "Athletic director" means an individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or the athletic program for females, as appropriate.

IV. "Contact" means a communication, direct or indirect, between an athlete agent and a student-athlete, to recruit or solicit the student-athlete to enter into an agency contract.

V. "Endorsement contract" means an agreement under which a student-athlete is employed or receives consideration to use on behalf of the other party any value that the student-athlete may have because of publicity, reputation, following, or fame obtained because of athletic ability or performance.

VI. "Intercollegiate sport" means a sport played at the collegiate level for which eligibility requirements for participation by a student-athlete are established by a national association for the promotion or regulation of collegiate athletics.

VII. "Professional sports-services contract" means an agreement under which an individual is employed, or agrees to render services, as a player on a professional sports team, with a professional sports organization, or as a professional athlete.

VIII. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

IX. "Registration" means registration as an athlete agent pursuant to this chapter.

X. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

XI. "Student-athlete" means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student-athlete for purposes of that sport.

332-J:2 Service of Process. –

By acting as an athlete agent, a nonresident individual appoints the New Hampshire secretary of state as the individual's agent for service of process in any civil action in this state related to the individual's acting as an athlete agent.

332-J:3 Registration Required. –

I. Except as otherwise provided in this section, an individual shall not act as an athlete agent in this state without holding a certificate of registration pursuant to RSA 332-J:4.

II. Before being issued a certificate of registration, an individual may act as an athlete agent in this state for all purposes except signing an agency contract, if:

(a) A student-athlete or another person acting on behalf of the student-athlete initiates communication with the individual; and

(b) Within 7 days after an initial act as an athlete agent, the individual submits an application for registration pursuant to RSA 332-J:4 as an athlete agent in this state.

III. An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract.

332-J:4 Registration Procedure. –

I. An applicant for registration shall submit an application for registration to the secretary of state in a form prescribed by the secretary of state. An application filed under this section shall be a public record for the purposes of RSA 91-A. The application shall be in the name of an individual and, except as otherwise provided in this section, signed or otherwise authenticated by the applicant under penalty of perjury, and shall contain:

(a) The name of the applicant and the address of the applicant's principal place of business.

(b) The name of the applicant's business or employer, if applicable.

(c) Any business or occupation engaged in by the applicant for the 5 years preceding the date of submission of the application.

(d) A description of the applicant's formal training as an athlete agent, practical experience as an athlete agent, and educational background relating to the applicant's activities as an athlete agent.

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

(f) The name, sport, and last known team for each individual for whom the applicant acted as an athlete agent during the 5 years preceding the date of submission of the application.

(g) The names and addresses of all persons who are, with respect to the athlete agent's business if it is not a corporation, the partners, members, officers, managers, associates, or profit-sharers of the business, and with respect to a corporation employing the athlete agent, the officers, directors, and any shareholder of the corporation having an interest of 5 percent or greater.

(h) Whether the applicant or any person named pursuant to this section has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony, and, if so, identify the crime.

(i) Whether there has been any administrative or judicial determination that the applicant or any person named pursuant to this section has made a false, misleading, deceptive, or fraudulent representation.

(j) Any instance in which the conduct of the applicant or any person named pursuant to this section resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event at a student-athlete or educational institution.

(k) Any sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to this section arising out of occupational or professional conduct.

(l) Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any person named pursuant to this section as an athlete agent in any state.

II. (a) An individual who holds a certificate of registration or licensure as an athlete agent in another state may submit a verified copy of such certificate or license in lieu of submitting an application in the form prescribed pursuant to this chapter. The secretary of state shall accept the certificate or license from the other state as an application for registration in this state.

(b) An individual who has submitted an application for registration or licensure as an athlete-agent in another state may submit a verified copy of such application to the secretary of state who shall accept such application as an application for registration in this state; provided, that the application to the other state:

(1) Was submitted in the other state within 6 months of the date the individual sought to obtain registration in this state and the applicant certifies that the information contained in the application is current;

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

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

332-J:5 Issuance, Denial, or Renewal of Certificate of Registration. –

I. Except as otherwise provided in this section, the secretary of state shall issue a certificate of registration to an individual who complies with RSA 332-J:4, I, or whose application has been accepted under RSA 332-J:4, II.

II. The secretary of state may refuse to issue a certificate of registration if the secretary of state determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the secretary of state may consider whether the applicant has:

(a) Been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony.

(b) Made a materially false, misleading, deceptive, or fraudulent representation in the application or as an athlete agent.

(c) Engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity.

(d) Engaged in conduct prohibited by RSA 332-J:13.

(e) Had a registration or licensure as an athlete agent suspended, revoked, or denied or been refused renewal of registration or licensure as an athlete agent in any state.

(f) Engaged in conduct the consequence of which was that a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event was imposed on a student-athlete or educational institution.

(g) Engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty, or integrity.

III. In making a determination under paragraph II, the secretary of state shall consider:

(a) How recently the conduct occurred;

(b) The nature of the conduct and the context in which it occurred; and

(c) Any other relevant conduct of the applicant.

IV. An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the secretary of state. A renewal application filed under this section shall be a public record for the purposes of RSA 91-A. The application for renewal shall be signed by the applicant under penalty of perjury and shall contain current information on all matters required in an original registration.

V. An individual who has submitted an application for renewal of registration or evidence of licensure in another state in lieu of submitting an application for renewal in the form prescribed pursuant to paragraph IV, may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. The secretary of state shall accept the application for renewal from the other state as an application for renewal in this state if the application to the other state:

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

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

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

VI. A certificate of registration or a renewal of a registration shall be valid for 2 years.

332-J:6 Suspension, Revocation, or Refusal to Renew Registration. –

The secretary of state may suspend, revoke, or refuse to renew a registration for conduct that would have justified denial of registration under RSA 332-J:5, II only after proper notice and an opportunity for a hearing.

332-J:7 Temporary Registration. –

The secretary of state may issue a temporary certificate of registration while an application for

registration or renewal of registration is being processed; provided, that any temporary certificate of registration issued under this section shall be conspicuously marked as a temporary, and shall be valid for not more than 10 days from the date of issuance.

332-J:8 Fees. –

An application for registration or renewal of registration shall be accompanied by a fee payable to the secretary of state in the following amount:

I. \$100 for an initial application for registration.

II. \$100 for an application for registration based upon a certificate of registration or licensure issued by another state.

III. \$50 for an application for renewal of registration.

IV. \$50 for an application for renewal of registration based upon an application for renewal of registration or licensure submitted in another state.

332-J:9 Required Form of Contract. –

I. An agency contract shall be in a record, signed or otherwise authenticated by the parties.

II. An agency contract shall state or contain:

(a) The amount and method of calculating the consideration to be paid by the student-athlete for services to be provided by the athlete agent under the contract and any other consideration the athlete agent has received or will receive from any other source for entering into the contract or for providing the services;

(b) The name of any person not listed in the application for registration or renewal of registration who will be compensated because the student-athlete signed the agency contract;

(c) A description of any expenses that the student-athlete agrees to reimburse;

(d) A description of the services to be provided to the student-athlete;

(e) The duration of the contract; and

(f) The date of execution.

III. An agency contract shall contain, in close proximity to the signature of the student-athlete, a conspicuous notice in boldface type in capital letters stating:

WARNING TO STUDENT-ATHLETE:

IF YOU SIGN THIS CONTRACT:

(1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT-ATHLETE IN YOUR SPORT.

(2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND

(3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.

IV. An agency contract that does not conform to this section is voidable by the student-athlete. If a student-athlete voids an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

V. The athlete agent shall give a record of the signed or otherwise authenticated agency contract to the student-athlete at the time of execution.

332-J:10 Notice to Educational Institution. –

I. Within 72 hours after entering into an agency contract or before the next scheduled athletic event in which the student-athlete may participate, whichever occurs first, the athlete agent shall give notice of the existence of the contract to the athletic director of the educational institution at which the student-athlete is enrolled, or the educational institution at which the athlete agent has

reasonable grounds to believe the student-athlete intends to enroll.

II. Within 72 hours after entering into an agency contract or before the next athletic event in which the student-athlete may participate, whichever occurs first, the student-athlete shall inform the athletic director of the educational institution at which the student-athlete is enrolled that he or she has entered into an agency contract.

332-J:11 Student-Athlete's Right to Cancel. –

I. A student-athlete may cancel an agency contract by giving written notice of the cancellation to the athlete agent within 14 days after the contract is signed.

II. A student-athlete may not waive the right to cancel an agency contract.

III. If a student-athlete cancels an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

332-J:12 Required Records. –

I. An athlete agent shall retain the following records for a period of 5 years:

(a) The name and address of each individual represented by the athlete agent.

(b) Any agency contract entered into by the athlete agent.

(c) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract.

II. Records required to be retained under this section are open to public inspection during normal business hours.

332-J:13 Prohibited Conduct; Penalties. –

I. An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, shall not:

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

(b) Furnish anything of value to a student-athlete before the student-athlete enters into the agency contract.

(c) Furnish anything of value to any individual other than the student-athlete or another registered athlete agent.

II. An athlete agent shall not:

(a) Initiate contact with a student-athlete unless registered under this chapter.

(b) Refuse or fail to retain or permit inspection of the records required to be retained by RSA 332-J:12.

(c) Fail to register when required by RSA 332-J:3.

(d) Provide materially false or misleading information in an application for registration or renewal of registration.

(e) Predate or postdate an agency contract.

(f) Fail to notify a student-athlete before the student-athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate as a student-athlete in that sport.

III. (a) An athlete agent who violates any provision of paragraph I is guilty of a class B felony.

(b) An athlete agent who violates any provision of paragraph II is guilty of a class A misdemeanor.

332-J:14 Civil Remedies. –

I. An educational institution has a right of action against an athlete agent or a former student-athlete for damages caused by a violation of RSA 332-J:13. In an action under this section, the court may award to the prevailing party costs and reasonable attorney's fees.

II. Damages of an educational institution under paragraph I include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student-athlete, the educational institution was injured by a violation of RSA 332-J:13 or was penalized, disqualified, or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by reasonable self-imposed

disciplinary action taken to mitigate sanctions likely to be imposed by such an organization.

III. A right of action under this section does not accrue until the educational institution discovers or by the exercise of reasonable diligence would have discovered the violation by the athlete agent or former student-athlete.

IV. Any liability of the athlete agent or the former student-athlete under this section is several and not joint.

V. This chapter does not restrict rights, remedies, or defenses of any person under law or equity.

332-J:15 Administrative Penalty. –

Notwithstanding RSA 651:2, IV, the secretary of state may assess a civil penalty against an athlete agent not to exceed \$25,000 for a violation of this chapter.