

Enrolled Senate Bill 5

Sponsored by Senator COURTNEY (Pre-session filed.)

CHAPTER

AN ACT

Relating to student athlete agents; creating new provisions; amending ORS 646.608, 702.005, 702.012, 702.017, 702.027, 702.029, 702.030, 702.047, 702.052, 702.054, 702.057 and 702.991; and repealing ORS 702.032 and 702.037.

Be It Enacted by the People of the State of Oregon:

SHORT TITLE

SECTION 1. ORS 702.005 to 702.065, 702.991 and 702.994 shall be known and may be cited as the Revised Uniform Athlete Agents Act.

DEFINITIONS

SECTION 2. ORS 702.005 is amended to read:

702.005. As used in ORS 702.005 to 702.065, 702.991 and 702.994:

(1) "Agency contract" means[:]

[(a) A written or oral] an agreement in which a student athlete authorizes a person, organization or legal, commercial or other entity to negotiate or solicit on behalf of the student athlete a professional sports services contract or an endorsement contract; or].

[(b) A written or oral agreement entered into by a student athlete that makes the student athlete ineligible to participate in an interscholastic or Intercollegiate sport because of a violation of rules or regulations established by a state or national organization that governs student athlete eligibility or participation].

[(2)(a) "Athlete agent" means an individual who, directly or indirectly:]

[(A) Represents or attempts to represent a student athlete for the purpose of marketing the student athlete's athletic ability or reputation for financial gain; or]

[(B) Seeks to obtain a type of financial gain or benefit from securing a prospective student athlete's enrollment at an educational institution or from a student athlete's potential earnings as a professional athlete.]

[(b) "Athlete agent" does not include a spouse, parent, sibling, grandparent or legal guardian of the student athlete or an individual acting solely on behalf of a professional sports team or professional sports organization.]

(2)(a) "Athlete agent" means an individual who:

(A) Directly or indirectly recruits or solicits a student athlete to enter into an agency contract; or

(B) For compensation, procures employment or offers, promises, attempts or negotiates to obtain employment for a student athlete as a professional athlete or member of a professional sports team or organization;

(C) For compensation or in anticipation of compensation related to a student athlete's participation in athletics:

(i) Serves the athlete in an advisory capacity on a matter related to finances, business pursuits or career management decisions; or

(ii) Manages the business affairs of the athlete by providing assistance with bills, payments, contracts or taxes;

(D) In anticipation of representing a student athlete for a purpose related to the athlete's participation in athletics:

(i) Gives consideration to the athlete or another person;

(ii) Serves the athlete in an advisory capacity on a matter related to finances, business pursuits or career management decisions; or

(iii) Manages the business affairs of the athlete by providing assistance with bills, payments, contracts or taxes; or

(E) Is a licensed, registered or certified professional and offers or provides services to a student athlete customarily provided by members of the profession and the individual:

(i) Also recruits or solicits the athlete to enter into an agency contract;

(ii) Also, for compensation, procures employment or offers, promises, attempts or negotiates to obtain employment for the athlete as a professional athlete or member of a professional sports team or organization; or

(iii) Receives consideration for providing the services calculated using a different method than for an individual who is not a student athlete.

(b) "Athlete agent" does not include an individual who:

(A) Acts solely on behalf of a professional sports team or organization;

(B) Is employed by, and acts solely on behalf of, a publicly traded corporation engaged in consumer brand marketing and seeking to negotiate an endorsement contract;

(C) Serves a student athlete in an advisory capacity on a matter related to finances, business pursuits or career management decisions and the individual is an employee of an educational institution acting exclusively as an employee of the institution for the benefit of the institution; or

(D) Is a licensed, registered or certified professional and offers or provides services to a student athlete customarily provided by members of the profession.

(3) "Athletic director" means:

(a) 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;

(b) If the educational institution is a public or private elementary school or secondary school and the educational institution does not have a person responsible for administering the overall athletic program:

(A) The principal of the educational institution; or

(B) If the educational institution does not have a principal, the person designated by the governing body of the school district, education service district or charter school to manage the educational institution; or

(c) If the educational institution is a **technical or vocational school, community college or university and the educational institution does not have a person responsible for administering the overall athletic program:**

(A) The president of the educational institution; or

(B) If the educational institution does not have a president, the person designated by the governing body of the educational institution to manage the educational institution.

(4) “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.

(5) “Educational institution” means a public or private elementary school, secondary school, **technical or vocational school**, community college, university or other educational institution.

(6) “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.

(7) **“Enrolled” means registered for courses and attending athletic practice or class.**

[(7)] (8) “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] **that promotes or regulates** collegiate athletics.

(9) **“Interscholastic sport” means a sport played between educational institutions that are not community colleges, colleges or universities.**

(10) **“Licensed, registered or certified professional” means an individual who is licensed, registered or certified as an attorney, dealer in securities, financial planner, insurance agent, real estate broker or sales agent, tax consultant or accountant or a member of a profession, other than that of athlete agent, who is licensed, registered or certified by the state or a nationally recognized organization that licenses, registers or certifies members of the profession on the basis of experience, education or testing.**

[(8)] (11) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, **business or nonprofit entity**, joint venture, public body, as defined in ORS 174.109, or any other legal or commercial entity.

[(9)] (12) “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.

[(10)] (13) “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.

(14)(a) **“Recruit or solicit” means attempt to influence the choice of an athlete agent by a student athlete or, if the athlete is a minor, a parent or guardian of the athlete.**

(b) **“Recruit or solicit” does not include giving advice on the selection of a particular athlete agent in a family, coaching or social situation unless the individual giving the advice does so because of the receipt or anticipated receipt of an economic benefit, directly or indirectly, from the agent.**

[(11)] (15) “Registration” means registration as an athlete agent pursuant to ORS 702.005 to 702.065, 702.991 and 702.994.

(16) **“Sign” means, with present intent to authenticate or adopt a record:**

(a) **To execute or adopt a tangible symbol; or**

(b) **To attach to or logically associate with the record an electronic symbol, sound or process.**

[(12)] (17) “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.

[(13)] (18) “Student athlete” means an individual [attending] **who is eligible to attend** an educational institution [within this state] who engages in, is eligible to engage in or may be eligible in the future to engage in any interscholastic **sport** or Intercollegiate sport. If an individual is permanently ineligible to participate in a particular interscholastic **sport** or Intercollegiate sport, the individual is not a student athlete for purposes of that sport.

REGISTRATION REQUIREMENTS

SECTION 3. ORS 702.012 is amended to read:

702.012. (1) Except as otherwise provided in subsection (2) of this section, an individual may not act as an athlete agent in Oregon without holding a certificate of registration issued under this section or ORS 702.019.

(2) Before being issued a certificate of registration, an individual may act as an athlete agent in Oregon for all purposes except entering into an agency contract, if:

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

(b) Within seven days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in Oregon.

(3) 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.

(4) Except as otherwise provided in subsection (5) of this section, the Department of Education shall issue a certificate of registration to an individual who complies with ORS 702.017 (1) and (2) *[or whose application has been accepted under ORS 702.017 (3)]*.

(5) The department may refuse to issue a certificate of registration if the department 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 department may consider whether the applicant has:

(a) **Pleaded guilty or no contest to, has been convicted of, or has charges pending for** *[Been convicted of]* a crime that, if committed in Oregon, 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 ORS 702.027;

(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; or

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

(6) In making a determination under subsection (5) of this section, the department 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.

(7) An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the department. The application for renewal must be signed by the applicant under penalty of perjury and must contain current information on all matters required in an original registration.

(8) An individual who has submitted an application for renewal of registration or licensure in another state, in lieu of submitting an application for renewal in the form prescribed pursuant to subsection (7) of this section, may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. **The department shall renew the registration if the department determines:**

(a) **The registration requirements of the other state are substantially similar to or more restrictive than ORS 702.005 to 702.065, 702.991 and 702.994; and**

(b) **The renewed registration has not been suspended or revoked and no action involving the individual's conduct as an athlete agent is pending against the individual or the individual's registration in any state.** *[The department shall accept the application for renewal from the other state as an application for renewal in Oregon if the application to the other state:]*

[(a) Was submitted in the other state within the preceding six months and the applicant certifies that 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 Oregon; and]

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

(9) A certificate of registration or a renewal of a registration is valid for two years.

(10) The department may suspend, revoke or refuse to renew a registration for conduct that would have justified denial of registration under subsection (5) of this section.

(11) The department may deny, suspend, revoke or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing.

APPLICATION FORM

SECTION 4. ORS 702.017 is amended to read:

702.017. (1) An applicant for registration **as an athlete agent** shall submit an application for registration to the Department of Education in a form prescribed by the department and, if requested by the department, shall allow the department to take fingerprints for the purpose of requesting a state or nationwide criminal records check under ORS 181A.195.

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

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

(b) The applicant's date of birth and place of birth;

(c) The following contact information for the applicant:

(A) Cellular and work telephone numbers; and

(B) Any means of electronic communication, including a facsimile number, electronic mail address and personal, business or employer website addresses;

[(b)] **(d) The following information about the applicant's business or employer, if applicable:**

(A) Name, address and telephone numbers *[of the applicant's business or employer, if applicable];*

(B) The nature of the business; and

(C) The type of organization;

(e) Each social media account with which the applicant or applicant's business or employer is affiliated;

[(c)] **(f) Any business or occupation engaged in by the applicant for the five years preceding the date of submission of the application, including self-employment and employment by others, and any professional or occupational license, registration or certification held by the applicant during that time;**

[(d)] **(g) A description of the applicant's:**

(A) Formal training as an athlete agent;

(B) Practical experience as an athlete agent; and

(C) Educational background relating to the applicant's activities as an athlete agent;

[(e)] **(h) The names and addresses of three individuals not related to the applicant who are willing to serve as references;**

[(f)] **(i) The name, sport and last known team for each individual for whom the applicant acted as an athlete agent during the five years preceding the date of submission of the application;**

[(g)] **(j) The names and addresses of all persons who are:**

(A) With respect to the athlete agent's business if the business is not a corporation, the partners, members, officers, managers, associates or profit sharers of the business; and]

(B) With respect to a corporation employing the athlete agent, the officers, directors and any shareholder of the corporation having an interest of five percent or more;]

(A) A partner, member, officer, manager, associate or profit sharer of the athlete agent's business or who directly or indirectly hold an equity interest of five percent or greater of the athlete agent's business if the business is not a corporation; and

(B) An officer or director of a corporation employing the athlete agent or a shareholder having an interest of five percent or greater in the corporation;

(k) A description of the status of any application by the applicant, or any person named under paragraph (j) of this subsection, for a state or federal business, professional or occupational license, other than as an athlete agent, from a state or federal agency, including any denial, refusal to renew, suspension, withdrawal or termination of the license and any reprimand or censure related to the license;

[(h)] **(L) Whether the applicant or any person named pursuant to paragraph [(g)] (j) of this subsection has pleaded guilty or no contest to, has been convicted of, or has charges pending for [been convicted of] a crime that, if committed in Oregon, would be a crime involving moral turpitude or a felony, and if so, [identify the crime] identification of the following[.];**

(A) The name of the crime;

(B) The law enforcement agency involved; and

(C) If applicable, the date of conviction and penalty imposed;

[(i)] **(m) Whether there has been any administrative or judicial determination that the applicant or any person named pursuant to paragraph [(g)] (j) of this subsection has made a false, misleading, deceptive or fraudulent representation;**

[(j)] **(n) Whether there has been any denial of an application for, suspension or revocation of, [or] refusal to renew or abandonment of the registration or licensure of the applicant or any person named pursuant to paragraph [(g)] (j) of this subsection as an athlete agent in any state;**

[(k)] **(o) Any sanction, suspension or disciplinary action taken against the applicant or any person named pursuant to paragraph [(g)] (j) of this subsection arising out of occupational or professional conduct; [and]**

[(L)] **(p) Any instance in which the conduct of the applicant or any person named pursuant to paragraph [(g)] (j) of this subsection resulted in the imposition of a sanction, suspension or declaration of ineligibility to participate in an interscholastic, [or] Intercollegiate or professional athletic event on a student athlete or an educational institution[.];**

(q) The name of each student athlete for whom the applicant acted as an athlete agent for the five years preceding the date of submission of the application or, if the athlete is a minor, the name of the parent or guardian of the athlete, together with the athlete's sport and last known team;

(r) Whether, within the 15 years preceding the date of submission of the application, the applicant, or any person named pursuant to paragraph (j) of this subsection, has been a defendant or respondent in a civil proceeding, including a proceeding seeking an adjudication of incompetence, and, if so, the date and a full explanation of each proceeding;

(s) Whether the applicant, or any person named under paragraph (j) of this subsection, has an unsatisfied judgment or order or a judgment of continuing effect for spousal support or child support and the applicant or person is in arrears as of the date of the application;

(t) Whether, within the 10 years preceding the date of submission of the application, the applicant, or any person named pursuant to paragraph (j) of this subsection, was adjudicated as bankrupt or was an owner of a business that was adjudicated as bankrupt;

(u) Each state in which the applicant currently is registered as an athlete agent or has applied to be registered as an athlete agent;

(v) If the applicant is certified or registered by a professional league or player's association:

(A) The name of the league or association;

(B) The date of certification or registration, and the date of expiration of the certification or registration, if any; and

(C) If applicable, the date of any denial of an application for, suspension or revocation of, refusal to renew, withdrawal of, or termination of, the certification or registration or any reprimand or censure related to the certification or registration; and

(w) Any other information required by the department.

[(3) An individual who has submitted an application for and holds a certificate of registration or licensure as an athlete agent in another state may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to subsection (2) of this section. The department shall accept the application and the certificate from the other state as an application for registration in Oregon if the application to the other state:]

[(a) Was submitted in the other state within the preceding six months and the applicant certifies that the information contained in the application is current;]

[(b) Contains information substantially similar to or more comprehensive than that required in an application submitted in Oregon; and]

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

(3) Instead of proceeding under subsection (2) of this section, an individual registered as an athlete agent in another state may apply for registration as an athlete agent in this state by submitting to the department:

(a) A copy of the application for registration in the other state;

(b) A statement that identifies any material change in the information on the application or verifies there is no material change in the information, signed under penalty of perjury; and

(c) A copy of the certificate of registration from the other state.

(4) The department shall issue a certificate of registration to an individual who applies for registration under subsection (3) of this section if the department determines:

(a) The application and registration requirements of the other state are substantially similar to or more restrictive than ORS 702.005 to 702.065, 702.991 and 702.994; and

(b) The registration has not been suspended or revoked and no action involving the individual's conduct as an athlete agent is pending against the individual or the individual's registration in any state.

(5) For purposes of implementing subsection (4) of this section, the department shall:

(a) Cooperate with national organizations concerned with athlete agent issues and agencies in other states that register athlete agents to develop a common registration form and determine which states have laws that are substantially similar to or more restrictive than ORS 702.005 to 702.065, 702.991 and 702.994; and

(b) Exchange information, including information related to actions taken against registered athlete agents or their registrations, with those organizations and agencies.

CONTRACT REQUIREMENTS

SECTION 5. ORS 702.047 is amended to read:

702.047. (1) A written agency contract must be in a record, signed or otherwise authenticated by the parties.

(2) A written agency contract must 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 **or, if the athlete is a minor, the parent or guardian of the athlete** signed the written 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[.]; **and**

(g) A statement that the athlete agent is registered as an athlete agent in this state and a list of any other states in which the agent is registered as an athlete agent.

(3) A written agency contract must contain, in close proximity to the signature of the student athlete **or, if the athlete is a minor, the signature of the parent or guardian of the athlete**, a conspicuous notice in boldfaced type in capital letters stating:

WARNING TO THE STUDENT ATHLETE:

IF YOU [SIGN] OR YOUR PARENT OR GUARDIAN SIGNS THIS CONTRACT:

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

(2) **IF YOU HAVE AN ATHLETIC DIRECTOR**, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, OR BEFORE YOU PARTICIPATE IN ANY INTERSCHOLASTIC OR INTERCOLLEGIATE SPORTS EVENT, WHICHEVER OCCURS FIRST, **THAT YOU HAVE ENTERED INTO THIS CONTRACT AND PROVIDE THE NAME AND CONTACT INFORMATION OF THE ATHLETE AGENT.**

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

(4) A written agency contract that does not conform to this section is voidable by the student athlete **or, if the athlete is a minor, the parent or guardian of the athlete.** *[If a student athlete voids a written agency contract under this subsection, 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.]* **If the contract is voided, any consideration received from the athlete agent under the contract to induce entering into the contract is not required to be returned.**

(5) The athlete agent shall give a record of the written agency contract to the student athlete **or, if the athlete is a minor, to the parent or guardian of the athlete** at the time of execution.

(6) **An agency contract must be accompanied by a separate record signed by the student athlete or, if the athlete is a minor, the parent or guardian of the athlete acknowledging that signing the contract may result in the loss of the athlete's eligibility to participate in the athlete's sport.**

(7) **At the time an agency contract is executed, the athlete agent shall give the student athlete or, if the athlete is a minor, the parent or guardian of the athlete a copy in a record of the contract and the separate acknowledgement required by subsection (6) of this section.**

(8) **If a student athlete is a minor, an agency contract must be signed by the parent or guardian of the athlete and the notice required by subsection (b) of this section must be revised accordingly.**

NOTICE OF CONTRACT

SECTION 6. ORS 702.054 is amended to read:

702.054. (1) 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 in a record of the existence of the contract to the athletic director of the educational institution at which the student athlete is enrolled or the athlete agent has reasonable grounds to believe the student athlete intends to enroll.

(2) 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 the student athlete has entered into an agency contract **and the name and contact information of the athlete agent.**

(3) **If a student athlete subsequently enrolls at an educational institution after entering into an agency contract, the athlete agent shall notify the athletic director of the institution of the existence of the contract not later than 72 hours after the agent knew or should have known the athlete enrolled.**

(4) **If an athlete agent has a relationship with a student athlete before the athlete enrolls in an educational institution and receives an athletic scholarship from the institution, the agent shall notify the institution of the relationship not later than 10 days after the enrollment if the agent knows or should have known of the enrollment and:**

(a) **The relationship was motivated in whole or part by the intention of the agent to recruit or solicit the athlete to enter an agency contract in the future; or**

(b) **The agent directly or indirectly recruited or solicited the athlete to enter an agency contract before the enrollment.**

NOTICE TO ATHLETIC DIRECTOR

SECTION 7. ORS 702.029 is amended to read:

702.029. (1) **As used in this section, “communicating or attempting to communicate” means contacting or attempting to contact by an in-person meeting, a record or any other method that conveys or attempts to convey a message.**

[(1)] (2) **Before *[initiating contact]* communicating or attempting to communicate with a student athlete[,] or, if the athlete is a minor, a parent or guardian of the athlete,** an athlete agent shall provide written notice to the athletic director of the educational institution at which the student athlete is enrolled *[or admitted]*. Notice provided under this subsection must state that the athlete agent intends to *[contact]* **communicate with:** *[a student athlete at the educational institution.]*

(a) **The athlete or, if the athlete is a minor, a parent or guardian of the athlete, to influence the athlete or parent or guardian to enter into an agency contract; or**

(b) **Another individual to have that individual influence the athlete or, if the athlete is a minor, the parent or guardian of the athlete to enter into an agency contract.**

(3) **Within 10 days after a communication or attempt to communicate with an athlete agent is initiated by a student athlete or another individual on behalf of the athlete, the agent shall provide written notice to the athletic director of any educational institution at which the athlete is enrolled.**

[(2)] (4) The written notice required by *[subsection (1) of]* this section may be delivered personally or by registered or certified mail, electronic mail, facsimile or other electronic means.

(5) **An educational institution that becomes aware of a violation of ORS 702.005 to 702.065, 702.991 and 702.994 by an athlete agent shall notify the Department of Education and any professional league or players association with which the institution is aware the agent is licensed or registered of the violation.**

RIGHT TO CANCEL CONTRACT

SECTION 8. ORS 702.052 is amended to read:

702.052. (1) **A student athlete or, if the athlete is a minor, the parent or guardian of the athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within 14 days after entering into the agency contract.**

(2) The right of a student athlete **or, if the athlete is a minor, the parent or guardian of the athlete** to cancel an agency contract under this section may not be waived.

(3) If a student athlete, **parent or guardian** cancels an agency contract, the student athlete, **parent or guardian** 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.

PROHIBITED CONDUCT

SECTION 9. ORS 702.027 is amended to read:

702.027. An athlete agent may not intentionally:

(1) Initiate contact with a student athlete **or, if the athlete is a minor, a parent or guardian of the athlete** unless registered under ORS 702.005 to 702.065, 702.991 and 702.994;

(2) Refuse or fail to retain or permit inspection of the records required to be retained by ORS 702.059;

(3) Fail to register when required by ORS 702.012;

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

(5) Predate or postdate a written agency contract; or

(6) Fail to notify a student athlete **or, if the athlete is a minor, a parent or guardian of the athlete** before the student athlete, **parent or guardian** enters into an agency contract for a particular sport that entering into the agency contract may make the student athlete ineligible to participate as a student athlete in that sport.

SECTION 10. ORS 702.030 is amended to read:

702.030. An athlete agent [*may not*], with the intent to induce a student athlete **or, if the athlete is a minor, a parent or guardian of the athlete** to enter into an agency contract, **may not take any of the following actions or encourage any other individual to take or assist any other individual in taking any of the following actions on behalf of the agent:**

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

(2) **Furnish anything of value to the student athlete before the student athlete enters into an agency contract.**

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

SECTION 11. ORS 702.032 and 702.037 are repealed.

PENALTIES

SECTION 12. ORS 702.991 is amended to read:

702.991. (1) **Violation of ORS 702.027 is a Class A misdemeanor.**

[(1)] (2) An athlete agent who violates ORS [702.032] **702.030 (2)** is guilty of a Class C felony.

[(2)] (3) Violation of the athlete agent's 72-hour notice requirement provided under ORS 702.054 (1) is a Class C felony.

[(3)] (4) It is a Class A misdemeanor for any person to conduct business as an athlete agent in the State of Oregon unless the person has a valid certificate of registration issued pursuant to ORS 702.012 or 702.019.

[(4)] (5) It is a Class A misdemeanor for any person to represent to another person by verbal claim, advertisement, letterhead, business card or any other means that the person is an athlete agent unless the person has a valid certificate of registration issued pursuant to ORS 702.012 or 702.019.

CIVIL REMEDIES

SECTION 13. ORS 702.057 is amended to read:

702.057. (1) An educational institution **or student athlete** shall have a cause of action against an athlete agent [*or a former student athlete*] for damages caused by a violation of ORS 702.005 to 702.065, 702.991 and 702.994. In an action under this section, the court may award to the prevailing party costs and reasonable attorney fees.

(2) For the purposes of this section, damages of an educational institution **or student athlete** include losses and expenses incurred because, as a result of the conduct of an athlete agent [*or former student athlete*], the educational institution **or student athlete** was injured by a violation of ORS 702.005 to 702.065, 702.991 and 702.994 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.

(3) A cause of action under this section does not accrue until the educational institution **or student athlete** discovers or by the exercise of reasonable diligence would have discovered the violation by the athlete agent [*or former student athlete*].

(4) Any liability of the athlete agent [*or the former student athlete*] under this section is several and not joint.

(5) ORS 702.005 to 702.065, 702.991 and 702.994 do not restrict rights, remedies or defenses of any person under law or equity.

CONFORMING AMENDMENTS

SECTION 14. ORS 646.608 is amended to read:

646.608. (1) A person engages in an unlawful practice if in the course of the person's business, vocation or occupation the person does any of the following:

- (a) Passes off real estate, goods or services as the real estate, goods or services of another.
- (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of real estate, goods or services.
- (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another.
- (d) Uses deceptive representations or designations of geographic origin in connection with real estate, goods or services.
- (e) Represents that real estate, goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, quantities or qualities that the real estate, goods or services do not have or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.
- (f) Represents that real estate or goods are original or new if the real estate or goods are deteriorated, altered, reconditioned, reclaimed, used or secondhand.
- (g) Represents that real estate, goods or services are of a particular standard, quality, or grade, or that real estate or goods are of a particular style or model, if the real estate, goods or services are of another.
- (h) Disparages the real estate, goods, services, property or business of a customer or another by false or misleading representations of fact.
- (i) Advertises real estate, goods or services with intent not to provide the real estate, goods or services as advertised, or with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity.
- (j) Makes false or misleading representations of fact concerning the reasons for, existence of, or amounts of price reductions.
- (k) Makes false or misleading representations concerning credit availability or the nature of the transaction or obligation incurred.

(L) Makes false or misleading representations relating to commissions or other compensation to be paid in exchange for permitting real estate, goods or services to be used for model or demonstration purposes or in exchange for submitting names of potential customers.

(m) Performs service on or dismantles any goods or real estate if the owner or apparent owner of the goods or real estate does not authorize the service or dismantling.

(n) Solicits potential customers by telephone or door to door as a seller unless the person provides the information required under ORS 646.611.

(o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate, discount or other value is contingent upon an event occurring after the time the customer enters into the transaction.

(p) Makes any false or misleading statement about a prize, contest or promotion used to publicize a product, business or service.

(q) Promises to deliver real estate, goods or services within a certain period of time with intent not to deliver the real estate, goods or services as promised.

(r) Organizes or induces or attempts to induce membership in a pyramid club.

(s) Makes false or misleading representations of fact concerning the offering price of, or the person's cost for real estate, goods or services.

(t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any known material defect or material nonconformity.

(u) Engages in any other unfair or deceptive conduct in trade or commerce.

(v) Violates any of the provisions relating to auction sales, consignment sales, auctioneers, consignees or auction marts under ORS 698.640, whether in a commercial or noncommercial situation.

(w) Manufactures mercury fever thermometers.

(x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal law, or is:

(A) Prescribed by a person licensed under ORS chapter 677; and

(B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and on the proper cleanup of mercury should breakage occur.

(y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to inform the purchaser that mercury is present in the thermostat and that the thermostat may not be disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the mercury does not become part of the solid waste stream or wastewater. For purposes of this paragraph, "thermostat" means a device commonly used to sense and, through electrical communication with heating, cooling or ventilation equipment, control room temperature.

(z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains mercury light switches.

(aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.

(bb) Violates ORS 646A.070 (1).

(cc) Violates any requirement of ORS 646A.030 to 646A.040.

(dd) Violates the provisions of ORS 128.801 to 128.898.

(ee) Violates ORS 646.883 or 646.885.

(ff) Violates ORS 646.569.

(gg) Violates the provisions of ORS 646A.142.

(hh) Violates ORS 646A.360.

(ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.

(jj) Violates ORS 646.563.

(kk) Violates ORS 759.690 or any rule adopted pursuant thereto.

(LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant thereto.

(mm) Violates ORS 646A.210 or 646A.214.

(nn) Violates any provision of ORS 646A.124 to 646A.134.

(oo) Violates ORS 646A.095.

(pp) Violates ORS 822.046.

(qq) Violates ORS 128.001.

(rr) Violates ORS 646A.800 (2) to (4).

(ss) Violates ORS 646A.090 (2) to (4).

(tt) Violates ORS 87.686.

(uu) Violates ORS 646A.803.

(vv) Violates ORS 646A.362.

(ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.

(xx) Violates ORS 180.440 (1) or 180.486 (1).

(yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.

(zz) Violates ORS 87.007 (2) or (3).

(aaa) Violates ORS 92.405 (1), (2) or (3).

(bbb) Engages in an unlawful practice under ORS 646.648.

(ccc) Violates ORS 646A.365.

(ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.

(eee) Sells a gift card in violation of ORS 646A.276.

(fff) Violates ORS 646A.102, 646A.106 or 646A.108.

(ggg) Violates ORS 646A.430 to 646A.450.

(hhh) Violates a provision of ORS 744.318 to 744.384.

(iii) Violates a provision of ORS 646A.702 to 646A.720.

(jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration described in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the subject of the violation.

(kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.

(LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq., as in effect on January 1, 2010.

(mmm) Violates a provision of ORS 646A.480 to 646A.495.

(nnn) Violates ORS 646A.082.

(ooo) Violates ORS 646.647.

(ppp) Violates ORS 646A.115.

(qqq) Violates a provision of ORS 646A.405.

(rrr) Violates ORS 646A.092.

(sss) Violates a provision of ORS 646.644.

(ttt) Violates a provision of ORS 646A.295.

(uuu) Violates ORS 646A.564.

(vvv) Engages in the business of, or acts in the capacity of, an immigration consultant, as defined in ORS 9.280, in this state and for compensation, unless federal law authorizes the person to do so or unless the person is an active member of the Oregon State Bar.

(www) Violates ORS 702.012, 702.029[, 702.032] or 702.054.

(xxx) Violates ORS 646A.806.

(yyy) Violates ORS 646A.810 (2).

(zzz) Violates a provision of sections 1 to 7, chapter 523, Oregon Laws 2015.

(2) A representation under subsection (1) of this section or ORS 646.607 may be any manifestation of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.

(3) In order to prevail in an action or suit under ORS 336.184 and 646.605 to 646.652, a prosecuting attorney need not prove competition between the parties or actual confusion or misunderstanding.

(4) An action or suit may not be brought under subsection (1)(u) of this section unless the Attorney General has first established a rule in accordance with the provisions of ORS chapter 183 declaring the conduct to be unfair or deceptive in trade or commerce.

(5) Notwithstanding any other provision of ORS 336.184 and 646.605 to 646.652, if an action or suit is brought under subsection (1)(xx) of this section by a person other than a prosecuting attorney, relief is limited to an injunction and the prevailing party may be awarded reasonable attorney fees.

SECTION 15. ORS 646.608, as amended by section 10, chapter 523, Oregon Laws 2015, is amended to read:

646.608. (1) A person engages in an unlawful practice if in the course of the person's business, vocation or occupation the person does any of the following:

- (a) Passes off real estate, goods or services as the real estate, goods or services of another.
- (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of real estate, goods or services.
- (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another.
- (d) Uses deceptive representations or designations of geographic origin in connection with real estate, goods or services.
- (e) Represents that real estate, goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, quantities or qualities that the real estate, goods or services do not have or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.
- (f) Represents that real estate or goods are original or new if the real estate or goods are deteriorated, altered, reconditioned, reclaimed, used or secondhand.
- (g) Represents that real estate, goods or services are of a particular standard, quality, or grade, or that real estate or goods are of a particular style or model, if the real estate, goods or services are of another.
- (h) Disparages the real estate, goods, services, property or business of a customer or another by false or misleading representations of fact.
- (i) Advertises real estate, goods or services with intent not to provide the real estate, goods or services as advertised, or with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity.
- (j) Makes false or misleading representations of fact concerning the reasons for, existence of, or amounts of price reductions.
- (k) Makes false or misleading representations concerning credit availability or the nature of the transaction or obligation incurred.
- (L) Makes false or misleading representations relating to commissions or other compensation to be paid in exchange for permitting real estate, goods or services to be used for model or demonstration purposes or in exchange for submitting names of potential customers.
- (m) Performs service on or dismantles any goods or real estate if the owner or apparent owner of the goods or real estate does not authorize the service or dismantling.
- (n) Solicits potential customers by telephone or door to door as a seller unless the person provides the information required under ORS 646.611.
- (o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate, discount or other value is contingent upon an event occurring after the time the customer enters into the transaction.
- (p) Makes any false or misleading statement about a prize, contest or promotion used to publicize a product, business or service.

- (q) Promises to deliver real estate, goods or services within a certain period of time with intent not to deliver the real estate, goods or services as promised.
- (r) Organizes or induces or attempts to induce membership in a pyramid club.
- (s) Makes false or misleading representations of fact concerning the offering price of, or the person's cost for real estate, goods or services.
- (t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any known material defect or material nonconformity.
- (u) Engages in any other unfair or deceptive conduct in trade or commerce.
- (v) Violates any of the provisions relating to auction sales, consignment sales, auctioneers, consignees or auction marts under ORS 698.640, whether in a commercial or noncommercial situation.
- (w) Manufactures mercury fever thermometers.
- (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal law, or is:
 - (A) Prescribed by a person licensed under ORS chapter 677; and
 - (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and on the proper cleanup of mercury should breakage occur.
- (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to inform the purchaser that mercury is present in the thermostat and that the thermostat may not be disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the mercury does not become part of the solid waste stream or wastewater. For purposes of this paragraph, "thermostat" means a device commonly used to sense and, through electrical communication with heating, cooling or ventilation equipment, control room temperature.
- (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains mercury light switches.
 - (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.
 - (bb) Violates ORS 646A.070 (1).
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 - (dd) Violates the provisions of ORS 128.801 to 128.898.
 - (ee) Violates ORS 646.883 or 646.885.
 - (ff) Violates ORS 646.569.
 - (gg) Violates the provisions of ORS 646A.142.
 - (hh) Violates ORS 646A.360.
 - (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
 - (jj) Violates ORS 646.563.
 - (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.
 - (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant thereto.
 - (mm) Violates ORS 646A.210 or 646A.214.
 - (nn) Violates any provision of ORS 646A.124 to 646A.134.
 - (oo) Violates ORS 646A.095.
 - (pp) Violates ORS 822.046.
 - (qq) Violates ORS 128.001.
 - (rr) Violates ORS 646A.800 (2) to (4).
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 - (tt) Violates ORS 87.686.
 - (uu) Violates ORS 646A.803.
 - (vv) Violates ORS 646A.362.
 - (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
 - (xx) Violates ORS 180.440 (1) or 180.486 (1).
 - (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
 - (zz) Violates ORS 87.007 (2) or (3).

- (aaa) Violates ORS 92.405 (1), (2) or (3).
 - (bbb) Engages in an unlawful practice under ORS 646.648.
 - (ccc) Violates ORS 646A.365.
 - (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
 - (eee) Sells a gift card in violation of ORS 646A.276.
 - (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
 - (ggg) Violates ORS 646A.430 to 646A.450.
 - (hhh) Violates a provision of ORS 744.318 to 744.384.
 - (iii) Violates a provision of ORS 646A.702 to 646A.720.
 - (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration described in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the subject of the violation.
 - (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
 - (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
 - (mmm) Violates a provision of ORS 646A.480 to 646A.495.
 - (nnn) Violates ORS 646A.082.
 - (ooo) Violates ORS 646.647.
 - (ppp) Violates ORS 646A.115.
 - (qqq) Violates a provision of ORS 646A.405.
 - (rrr) Violates ORS 646A.092.
 - (sss) Violates a provision of ORS 646.644.
 - (ttt) Violates a provision of ORS 646A.295.
 - (uuu) Violates ORS 646A.564.
 - (vvv) Engages in the business of, or acts in the capacity of, an immigration consultant, as defined in ORS 9.280, in this state and for compensation, unless federal law authorizes the person to do so or unless the person is an active member of the Oregon State Bar.
 - (www) Violates ORS 702.012, 702.029[, 702.032] or 702.054.
 - (xxx) Violates ORS 646A.806.
 - (yyy) Violates ORS 646A.810 (2).
- (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifestation of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.
- (3) In order to prevail in an action or suit under ORS 336.184 and 646.605 to 646.652, a prosecuting attorney need not prove competition between the parties or actual confusion or misunderstanding.
- (4) An action or suit may not be brought under subsection (1)(u) of this section unless the Attorney General has first established a rule in accordance with the provisions of ORS chapter 183 declaring the conduct to be unfair or deceptive in trade or commerce.
- (5) Notwithstanding any other provision of ORS 336.184 and 646.605 to 646.652, if an action or suit is brought under subsection (1)(xx) of this section by a person other than a prosecuting attorney, relief is limited to an injunction and the prevailing party may be awarded reasonable attorney fees.

CAPTIONS

SECTION 16. The unit captions used in this 2017 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2017 Act.

Passed by Senate February 23, 2017

.....
Lori L. Brocker, Secretary of Senate

.....
Peter Courtney, President of Senate

Passed by House May 9, 2017

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Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2017

Approved:

.....M,....., 2017

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2017

.....
Dennis Richardson, Secretary of State