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Chapter No. 541

11/HR40/R656SG

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HOUSE BILL NO. 1190

Originated in House Dom Richardson Clerk

HOUSE BILL NO. 1190

AN ACT TO REVISE THE PROVISIONS OF THE MISSISSIPPI "UNIFORM ATHLETE AGENTS LAW"; TO AMEND SECTION 73-42-3, MISSISSIPPI CODE OF 1972, TO CLARIFY CERTAIN DEFINITIONS; TO AMEND SECTION 73-42-5, MISSISSIPPI CODE OF 1972, TO ENHANCE THE SECRETARY OF STATE'S POWER IN INVESTIGATIONS OF ATHLETE AGENTS; TO AMEND SECTION 73-42-7, MISSISSIPPI CODE OF 1972, TO DELETE AUTHORITY OF AN INDIVIDUAL TO ACT AS AN ATHLETE AGENT BEFORE REGISTRATION AS SAME IF A STUDENT-ATHLETE INITIATES CONTACT; TO AMEND SECTION 73-42-9, MISSISSIPPI CODE OF 1972, TO REQUIRE AN APPLICANT TO PROVIDE A LIST OF ANY PENDING LITIGATION AGAINST THE APPLICANT IN HIS CAPACITY AS AN AGENT; TO REQUIRE THE APPLICANT TO PROVIDE A LIST OF OTHER STATES IN WHICH HE IS LICENSED OR REGISTERED AS AN ATHLETE AGENT; TO PROVIDE THAT THE SECRETARY OF STATE MAY REQUIRE AN APPLICANT TO SUBMIT TO A CRIMINAL BACKGROUND CHECK; TO REQUIRE THE APPLICANT TO NOTIFY THE SECRETARY OF STATE WITHIN 30 DAYS IF THERE IS A MATERIAL CHANGE IN THE INFORMATION CONTAINED IN ANY APPLICATION FOR REGISTRATION; TO AMEND SECTIONS 73-42-11, 73-42-13, 73-42-19, 73-42-23 AND 73-42-27, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; TO AMEND SECTION 73-42-17, MISSISSIPPI CODE OF 1972, TO INCREASE THE APPLICATION FEES AND ADD A FEE FOR THE CRIMINAL BACKGROUND CHECK; TO AMEND SECTION 73-42-21, MISSISSIPPI CODE OF 1972, TO REQUIRE THE AGENT TO NOTIFY THE EDUCATIONAL INSTITUTION IN WHICH THE STUDENT-ATHLETE IS ENROLLED BEFORE THE AGENT MAY CONTACT THE STUDENT-ATHLETE, THE STUDENT-ATHLETE'S SPOUSE, PARENT, FOSTER PARENT, GUARDIAN, SIBLING, AUNT, UNCLE, GRANDPARENT, CHILD, OR FIRST COUSIN; OR A REPRESENTATIVE OF ANY OF THESE PERSONS; TO CODIFY SECTION 73-42-34, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT IF THE SECRETARY DETERMINES THAT A PERSON IS VIOLATING THE UNIFORM ATHLETE AGENTS ACT, THEN HE MAY ISSUE ORDERS TO CEASE AND DESIST CERTAIN ACTS OR PRACTICES AND ORDERS TO IMPOSE ADMINISTRATIVE PENALTIES, AND HE MAY TAKE ANY OTHER ACTION AUTHORIZED UNDER THE ACT; TO PROVIDE THAT THE SECRETARY MAY IMPOSE COSTS RELATED TO THE INVESTIGATION OR ADMINISTRATIVE PROCEEDING, COLLECT CIVIL PENALTIES AND COSTS; TO PROVIDE FOR APPEALS OF THE SECRETARY'S ORDERS TO CIRCUIT COURT; TO PROVIDE THAT THE FINDINGS OF FACTS MADE BY THE SECRETARY ARE CONCLUSIVE, IF SUPPORTED BY EVIDENCE; TO CODIFY SECTION 73-42-37, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE PROVISIONS OF THIS ACT MODIFY, LIMIT AND SUPERSEDE THE FEDERAL ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT, WITH CERTAIN EXCEPTIONS; TO CODIFY SECTION 73-42-39, MISSISSIPPI CODE OF 1972, TO ADD SPECIFIC RULEMAKING AUTHORITY FOR THE SECRETARY OF STATE TO CARRY OUT THE ACT; TO BRING FORWARD SECTIONS 73-42-1, 73-42-15, 73-42-25, 73-42-29, 73-42-31, 73-42-33 AND 73-42-35, MISSISSIPPI CODE OF 1972; FOR THE PURPOSE OF POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 73-42-1, Mississippi Code of 1972, is brought forward as follows:

73-42-1. This chapter may be cited as the "Uniform Athlete Agents Act."

SECTION 2. Section 73-42-3, Mississippi Code of 1972, is amended as follows:

73-42-3. In this chapter:

(a) "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, an endorsement contract, or enrollment at any educational institution that offers an athletic scholarship to the student-athlete.

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

(c) "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.

(d) "Contact" means a communication, direct or indirect, written or oral, between an athlete agent and a student-athlete, to recruit, induce or solicit the student-athlete to enter into an agency contract.

(e) "Endorsement contract" means an agreement under which a student-athlete is employed or receives consideration or anything of * * * value for the student-athlete's * * * publicity, reputation, following, or fame obtained because of the student-athlete's athletic ability or performance.

(f) "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.

(g) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency or instrumentality; public corporation, or any other legal or commercial entity.

(h) "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.

(i) "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.

(j) "Registration" means registration as an athlete agent pursuant to this chapter.

(k) "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.

(l) "Student-athlete" means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, a sport for a professional sports team or in any intercollegiate sport at any educational institution. 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.

SECTION 3. Section 73-42-5, Mississippi Code of 1972, is amended as follows:

73-42-5. (1) The Secretary of State shall administer this chapter.

(2) By engaging in the business of an athlete agent in this state, a nonresident individual appoints the Secretary of State as the individual's agent to accept service of process in any civil action related to the individual's business as an athlete agent in this state.

(3) The Secretary of State may * * *:

(a) Conduct public or private investigations within or outside of this state which he considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate any provision of this chapter or a rule adopted under this chapter, or to aid in the enforcement of this chapter or in the adoption of rules and forms under this chapter;

(b) Require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as he may determine, as to all facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted; and

(c) Publish a record concerning an action, proceeding, or an investigation under, or a violation of, this chapter or a rule adopted under this chapter if he determines it is necessary or appropriate in the public interest.

(4) For the purpose of an investigation under this chapter, the Secretary of State or his designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements, and require the production of any records that the Secretary of State considers relevant or material to the investigation.

SECTION 4. Section 73-42-7, Mississippi Code of 1972, is amended as follows:

73-42-7. (1) Except as otherwise provided in subsection (2), an individual may not act as an athlete agent in this state before being issued a certificate of registration under Section 73-42-11 or 73-42-15.

(2) * * * Before being issued a certificate of registration, an individual may act as an athlete agent for all purposes except signing an agency contract if * * * within seven (7) days after an initial act as an athlete agent, the individual submits an application to register as an athlete agent in this state.

(3) An agency contract resulting from conduct in violation of this section is void. The athlete agent shall return any consideration received under the contract to the individual or entity who tendered or paid the consideration.

SECTION 5. Section 73-42-9, Mississippi Code of 1972, is amended as follows:

73-42-9. (1) 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 is a public record. Except as otherwise provided in subsection (2), the application must be in the name of an individual, signed by the applicant under penalty of perjury and must state or 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 five (5) years next preceding the date of submission of the application;

(d) A description of the applicant's:

(i) Formal training as an athlete agent;

(ii) Practical experience as an athlete agent; and
(iii) Educational background relating to the applicant's activities as an athlete agent;

(e) The names and addresses of three (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 provided services as an athlete agent during the five (5) years next preceding the date of submission of the application;

(g) The names and addresses of all persons who are:

(i) With respect to the athlete agent's business if it is not a corporation, the partners, officers, associates, individuals or profit-sharers; and

(ii) With respect to a company or corporation employing the athlete agent, the officers, directors and any shareholder of the corporation or member with a five percent (5%) or greater interest;

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

(i) Whether there has been any administrative or judicial determination that the applicant or any other person named pursuant to paragraph (g) has made a false, misleading, deceptive or fraudulent representation;

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

(k) Any sanction, suspension or disciplinary action taken against the applicant or any other person named pursuant to paragraph (g) 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 certification, registration or licensure of the applicant or any other person named pursuant to paragraph (g) as an athlete agent in any state;

(m) Any pending litigation against the applicant in the applicant's capacity as an agent;

(n) A list of all other states in which the applicant is currently licensed or registered as an athlete agent and a copy of each state's license or registration, as applicable; and

(o) Consent to submit to a criminal background check before being issued a certificate of registration. Any fees connected with the background check shall be assessed to the applicant.

(2) An individual who has submitted an application for, and received a certificate of, registration or licensure as an athlete agent in another state, may submit a copy of the application and a valid certificate of registration or licensure from the other state in lieu of submitting an application in the form prescribed pursuant to subsection (1), along with the information requested in paragraphs (l), (m), (n) and (o) of subsection (1). The Secretary of State shall accept the application and the certificate from the other state as an application for registration in this state if the application to the other state:

(a) Was submitted in the other state within the six (6) months next preceding the submission of the application in this state and the applicant certifies 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 this state; and

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

(3) An athlete agent must notify the Secretary of State within thirty (30) days whenever the information contained in any application for registration as an athlete agent in this state changes in a material way or is, or becomes, inaccurate or incomplete in any respect. Events requiring notice shall include, but are not limited to, the following:

(a) Change in address of the athlete agent's principal place of business;

(b) Conviction of a felony or other crime involving moral turpitude by the athlete agent;

(c) Denial, suspension, refusal to renew, or revocation of a registration or license of the athlete agent as an athlete agent in any state; or

(d) Sanction, suspension or other disciplinary action taken against the athlete agent arising out of occupational or professional conduct.

SECTION 6. Section 73-42-11, Mississippi Code of 1972, is amended as follows:

73-42-11. (1) Except as otherwise provided in subsection (3), the Secretary of State shall issue a certificate of registration to an individual who complies with Section 73-42-9(1).

(2) Except as otherwise provided in subsection (3), the Secretary of State shall issue a certificate of registration to an individual whose application has been accepted under Section 73-42-9(2).

(3) The Secretary of State may refuse to issue a certificate of registration if he determines that the applicant has engaged in

conduct that has a significant adverse effect on the applicant's fitness to serve as an athlete agent. In making the determination, the Secretary of State may consider whether the applicant has:

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

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

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

(d) Engaged in conduct prohibited by Section 73-42-27;

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

(f) Engaged in conduct or failed to engage 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 trustworthiness or credibility * * *.

(4) In making a determination under subsection (3), 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.

(5) An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the Secretary of State. An application filed under this section is a public record. 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.

(6) 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 (5), may file a copy of the application for renewal and a valid certificate of registration 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 the last six (6) months 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.

(7) Except as provided in Section 33-1-39, a certificate of registration or a renewal of a registration is valid for two (2) years.

SECTION 7. Section 73-42-13, Mississippi Code of 1972, is amended as follows:

73-42-13. (1) After proper notice and an opportunity for a hearing, the Secretary of State may deny, suspend, revoke or refuse to renew a registration for conduct that would have justified denial of registration under Section 73-42-11(3) or for a violation of any provision of this chapter.

* * *

(2) (a) The Secretary of State shall appoint at least one (1) hearing officer for the purpose of holding hearings, compiling evidence and rendering decisions under this section and Section 73-42-11. The hearing officer shall fix the date for an

adjudicatory hearing and notify the athlete agent involved. The hearing shall be held at a location to be designated by the hearing officer. Unless the time period is extended by the hearing officer, the hearing shall be held not less than fifteen (15) nor more than thirty (30) days after the mailing of notice to the athlete agent involved. At the conclusion of the hearing, the hearing officer shall make a recommendation regarding the registration of the athlete agent involved. The Secretary of State shall then take appropriate action by final order.

(b) Any athlete agent whose application for registration has been denied or not renewed, or whose registration has been revoked or suspended by the Secretary of State, within thirty (30) days after the date of such final order, shall have the right of a trial de novo on appeal to the circuit court of the county of residence of the athlete agent, the student-athlete, or the educational institution that issued an athletic scholarship to the student-athlete. If the secretary's final order is supported by substantial evidence and does not violate a state or federal law, then it shall be affirmed by the circuit court. Either party shall have the right of appeal to the Supreme Court as provided by law from any decision of the circuit court. No athlete agent shall be allowed to deliver services to a student-athlete domiciled or residing in Mississippi * * * while any such appeal is pending.

(3) In addition to the reasons specified in subsection (1) * * * of this section, the secretary shall be authorized to suspend the registration of any person for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a registration for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a registration suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a registration suspended for that purpose, shall

be governed by Section 93-11-157 or 93-11-163, as the case may be. Actions taken by the secretary in suspending the registration of a person when required by Section 93-11-157 are not actions from which an appeal may be taken under this section. Any appeal of a registration suspension that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SECTION 8. Section 73-42-15, Mississippi Code of 1972, is brought forward as follows:

73-42-15. The Secretary of State may issue a temporary certificate of registration while an application for registration or renewal is pending.

SECTION 9. Section 73-42-17, Mississippi Code of 1972, is amended as follows:

73-42-17. (1) An application for registration or renewal of registration must be accompanied by a fee in the following amount:

(a) Two Hundred Dollars (\$200.00) for an initial application for registration.

(b) Two Hundred Dollars (\$200.00) for an application for registration based upon a certificate of registration or licensure issued by another state.

(c) Two Hundred Dollars (\$200.00) for an application for renewal of registration. * * *

(d) Two Hundred Dollars (\$200.00) for an application for renewal of registration based upon an application for renewal of registration or licensure submitted in another state.

(2) In addition, the Secretary of State may impose a fee for the actual costs incurred by the Secretary of State's office for

processing and administering one or more criminal history background checks.

SECTION 10. Section 73-42-19, Mississippi Code of 1972, is amended as follows:

73-42-19. (1) An agency contract must be in a record, signed by the parties.

(2) An 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 or anything of value that 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 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.

(3) An agency contract must 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) BOTH YOU AND YOUR ATHLETE AGENT ARE REQUIRED TO TELL YOUR ATHLETIC DIRECTOR, IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER ENTERING INTO AN AGENCY CONTRACT; AND

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

(4) An agency contract that does not conform to this section is voidable by the student-athlete.

(5) The athlete agent shall give a copy of the signed agency contract to the student-athlete at the time of signing.

SECTION 11. Section 73-42-21, Mississippi Code of 1972, is amended as follows:

73-42-21. (1) Before an athlete agent, or his or her employee or representative, may initiate a first contact, direct or indirect, with any of the individuals listed below, with the intent or for the purpose of soliciting the student-athlete or of procuring employment from the student-athlete, the athlete agent, or his or her employee or representative, must provide the educational institution at which the student-athlete is enrolled with written notification of the planned contact with these individuals:

(a) The student-athlete;

(b) The student-athlete's spouse, parent, foster parent, guardian, sibling, aunt, uncle, grandparent, child or first cousin; or the parent, foster parent, sibling, aunt, uncle, grandparent, child or first cousin of the student-athlete's spouse; or

(c) A representative of any of the individuals enumerated in paragraphs (a) and (b) of this subsection (1).

(2) Within seventy-two (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 agency contract to the athletic director of the educational institution at which the student-athlete is enrolled or at which

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

(3) Within seventy-two (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.

SECTION 12. Section 73-42-23, Mississippi Code of 1972, is amended as follows:

73-42-23. (1) A student-athlete may cancel an agency contract by giving notice * * * to the athlete agent of the cancellation within fourteen (14) days after the date the contract is signed.

(2) A student-athlete may not waive the right to cancel any agency contract.

(3) 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.

SECTION 13. Section 73-42-25, Mississippi Code of 1972, is brought forward as follows:

73-42-25. (1) An athlete agent shall retain the following records for a period of five (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; and

(c) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete.

(2) Records required by subsection (1) to be retained are open to inspection by the Secretary of State during normal business hours.

SECTION 14. Section 73-42-27, Mississippi Code of 1972, is amended as follows:

73-42-27. (1) An athlete agent may not engage in any of the following activities, within this state or otherwise, with the intent to induce a student-athlete to enter into an agency contract:

(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; or

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

(2) An athlete agent may not intentionally:

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

(b) Refuse or willfully fail to retain or permit inspection of the records required by Section 73-42-25 or fail to provide the Secretary of State with any statements, documents, records or testimony required by the secretary under Section 73-42-5(3) and (4);

(c) Violate Section 73-42-7 by failing to register;

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

(e) Predate or postdate an agency contract; or

(f) Fail to notify a student-athlete prior to the student-athlete's signing an agency contract for a particular sport that the signing by the student-athlete may make the student-athlete ineligible to participate as a student-athlete in that sport.

SECTION 15. Section 73-42-29, Mississippi Code of 1972, is brought forward as follows:

73-42-29. The commission of any act prohibited by Section 73-42-27 by an athlete agent is a felony punishable by a fine of

not more than Ten Thousand Dollars (\$10,000.00) or by imprisonment of not more than two (2) years, or both.

SECTION 16. Section 73-42-31, Mississippi Code of 1972, is brought forward as follows:

73-42-31. (1) An educational institution has a right of action against an athlete agent or a former student-athlete for damages caused by a violation of this act. In an action under this section, the court may award to the prevailing party costs and reasonable attorney's fees.

(2) Damages of an educational institution under subsection (1) include losses and expenses incurred because, as a result of the activities of an athlete agent or former student-athlete, the educational institution was injured by a violation of this chapter 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.

(3) 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.

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

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

SECTION 17. Section 73-42-33, Mississippi Code of 1972, is brought forward as follows:

73-42-33. The Secretary of State may assess a civil penalty against an athlete agent not to exceed Twenty-five Thousand Dollars (\$25,000.00) for a violation of this chapter.

SECTION 18. The following shall be codified as Section 73-42-34, Mississippi Code of 1972:

73-42-34. (1) If the Secretary of State determines that a person has engaged in or is engaging in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter, or that a person has materially aided or is materially aiding in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter, then the secretary may:

(a) Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business, or to take other action necessary or appropriate to comply with this chapter or any rule adopted or order issued under this chapter;

(b) Issue an order imposing an administrative penalty against an athlete agent who violated any provision of this chapter or any rule adopted or order issued under this chapter; and

(c) Take any other action authorized under the provisions of this chapter.

(2) An order issued under subsection (1) of this section is effective on the date of its issuance. Upon the order's issuance, the Secretary of State shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement of any civil penalty or other administrative remedy to be imposed under subsection (1) of this section, a statement of the costs of investigation that the secretary will seek to recover, a statement of the reasons for the order, and a statement notifying the person of his or her right to a hearing under Section 72-42-13. If a person subject to the order does not request a hearing in writing within thirty (30) days of the date of the order and none is ordered by the hearing officer, then the order, including the imposition of a civil penalty or requirement for payment of the

costs of investigation, shall become final as to that person by operation of law.

(3) In a final order, the secretary may charge the actual cost of an investigation or proceeding for a violation of this chapter or a rule adopted or order issued under this chapter.

(4) If a petition for judicial review of a final order is not filed in accordance with Section 73-42-37, or the petition is denied by the court, the secretary may file a certified copy of the final order with the clerk of a court in the jurisdiction where enforcement will be sought. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

(5) If a person does not comply with an order issued under this section, the secretary may petition a court of competent jurisdiction to enforce the order and collect administrative civil penalties and costs imposed under the final order. The court may not require the secretary to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person did not comply with the order, the court may adjudge the person in civil contempt of the order. The court may grant any relief the court determines is just and proper in the circumstances.

(6) Any person aggrieved by a final order of the secretary may obtain a review of the order in the circuit court of the county of residence of the athlete agent, the student-athlete, or the public or private college, university, community or junior college in the state that issued an athletic scholarship to the student-athlete, by filing within thirty (30) days after the entry of the order, a written petition praying that the order be modified or set aside, in whole or in part. A copy of the petition shall be served upon the secretary, and the secretary shall certify and file with the court a copy of the record and evidence upon which the order was entered. When these have been

filed, the court has exclusive jurisdiction to affirm, modify, enforce or set aside the order, in whole or in part. The findings of the secretary as to the facts, if supported by competent material and substantial evidence, are conclusive. The beginning of proceedings under this subsection does not operate as a stay of the secretary's order, unless specifically ordered by the court.

SECTION 19. Section 73-42-35, Mississippi Code of 1972, is brought forward as follows:

73-42-35. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 20. The following shall be codified as Section 73-42-37, Mississippi Code of 1972:

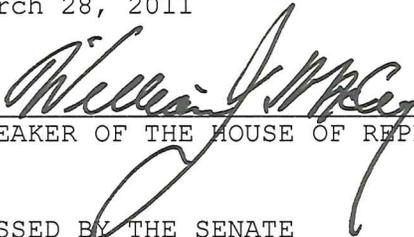
73-42-37. The provisions of this chapter modify, limit and supersede the federal Electronic Signatures in Global and National Commerce Act, 15 USCS Section 7001, et seq., except that those provisions do not modify, limit, or supersede Section 101(c) of that act, 15 USCS Section 7001(c), and do not authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 USCS Section 7003(b).

SECTION 21. The following shall be codified as Section 73-42-39, Mississippi Code of 1972:

73-42-39. The Secretary of State may promulgate rules and regulations necessary to administer, carry out and enforce this chapter and to define terms whether or not used in this chapter, but those definitions may not be inconsistent with this chapter.

SECTION 22. This act shall take effect and be in force from
and after its passage.

PASSED BY THE HOUSE OF REPRESENTATIVES
March 28, 2011



SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 28, 2011



PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR



GOVERNOR

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