

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 3039

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

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 3, 2002

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

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## A BILL

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

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

3       **SECTION 1. SHORT TITLE.**

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

6       **SEC. 2. DEFINITIONS.**

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

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

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

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

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

24           (5) ENDORSEMENT CONTRACT.—The term “en-  
25 dorsement contract” means an agreement under

1 which a student athlete is employed or receives con-  
2 sideration for the use by the other party of that in-  
3 dividual's person, name, image, or likeness in the  
4 promotion of any product, service, or event.

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

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

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

22 (9) STUDENT ATHLETE.—The term “student  
23 athlete” means an individual who engages in, is eli-  
24 gible to engage in, or may be eligible in the future  
25 to engage in, any intercollegiate sport. An individual

1 who is permanently ineligible to participate in a par-  
 2 ticular intercollegiate sport is not a student athlete  
 3 for purposes of that sport.

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

8 (a) **CONDUCT PROHIBITED.**—It is unlawful for an  
 9 athlete agent to—

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

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

15 (B) providing anything of value to a stu-  
 16 dent athlete or anyone associated with the stu-  
 17 dent athlete before the student athlete enters  
 18 into an agency contract;

19 (2) enter into an agency contract with a stu-  
 20 dent athlete without providing the student athlete  
 21 with the disclosure document described in subsection  
 22 (b); or

23 (3) predate or postdate an agency contract.

24 (b) **REQUIRED DISCLOSURE BY ATHLETE AGENTS**  
 25 **TO STUDENT ATHLETES.**—

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

10           (2) SIGNATURE OF STUDENT ATHLETE.—The  
11           disclosure document must be signed by the student  
12           athlete, or, if the student athlete is under the age of  
13           18 by such student athlete’s parent or legal guard-  
14           ian, prior to entering into the agency contract.

15           (3) REQUIRED LANGUAGE.—The disclosure docu-  
16           ment must contain, in close proximity to the signa-  
17           ture of the student athlete, or, if the student athlete  
18           is under the age of 18, the signature of such student  
19           athlete’s parent or legal guardian, a conspicuous no-  
20           tice in boldface type stating: “**Warning to Stu-**  
21           **dent Athlete: If you agree orally or in**  
22           **writing to be represented by an agent**  
23           **now or in the future you may lose your**  
24           **eligibility to compete as a student athlete**  
25           **in your sport. Within 72 hours after en-**

1        **tering into this contract or before the**  
2        **next athletic event in which you are eligi-**  
3        **ble to participate, whichever occurs first,**  
4        **both you and the agent by whom you are**  
5        **agreeing to be represented must notify**  
6        **the athletic director of the educational**  
7        **institution at which you are enrolled, or**  
8        **other individual responsible for athletic**  
9        **programs at such educational institution,**  
10       **that you have entered into an agency**  
11       **contract.”.**

12       **SEC. 4. ENFORCEMENT.**

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

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

24       **SEC. 5. ACTIONS BY STATES.**

25       (a) IN GENERAL.—

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

10                   (A) enjoin that practice;

11                   (B) enforce compliance with this Act;

12                   (C) obtain damage, restitution, or other  
13 compensation on behalf of residents of the  
14 State; or

15                   (D) obtain such other relief as the court  
16 may consider to be appropriate.

17           (2) NOTICE.—

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

22                           (i) written notice of that action; and

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

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

11         (b) INTERVENTION.—

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

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

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

21                   (B) to file a petition for appeal.

22         (c) CONSTRUCTION.—For purposes of bringing any  
23         civil action under subsection (a), nothing in this title shall  
24         be construed to prevent an attorney general of a State

1 from exercising the powers conferred on the attorney gen-  
2 eral by the laws of that State to—

3 (1) conduct investigations;

4 (2) administer oaths or affirmations; or

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

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

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

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

20 (1) is an inhabitant; or

21 (2) may be found.

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

23 (a) NOTICE REQUIRED.—Within 72 hours after en-  
24 tering into an agency contract or before the next athletic  
25 event in which the student athlete may participate, which-

1 ever occurs first, the athlete agent and the student athlete  
2 shall each inform the athletic director of the educational  
3 institution at which the student athlete is enrolled, or  
4 other individual responsible for athletic programs at such  
5 educational institution, that the student athlete has en-  
6 tered into an agency contract, and the athlete agent shall  
7 provide the athletic director with notice in writing of such  
8 a contract.

9 (b) CIVIL REMEDY.—

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

13 (2) DAMAGES.—Damages of an educational in-  
14 stitution may include losses and expenses incurred  
15 because, as a result of the conduct of the athlete  
16 agent, the educational institution was injured by a  
17 violation of this Act or was penalized, disqualified,  
18 or suspended from participation in athletics by a na-  
19 tional association for the promotion and regulation  
20 of athletics, by an athletic conference, or by reason-  
21 able self-imposed disciplinary action taken to miti-  
22 gate actions likely to be imposed by such an associa-  
23 tion or conference.

24 (3) COSTS AND ATTORNEYS FEES.—In an ac-  
25 tion taken under this section, the court may award

1 to the prevailing party costs and reasonable attor-  
2 neys fees.

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

7 **SEC. 7. SENSE OF CONGRESS.**

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

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