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Diane Sudia

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THE HISTORY BEHIND ATHLETE AGENT REGULATION AND THE "SLAM DUNKING OF STATUTORY HURDLES"

DIANE SUDIA* & ROB REMIS**

I. INTRODUCTION

The gentle, warm-hearted, loving athlete agent sees the stranded linebacker furiously trying to check the air pressure on the "Wilderness Exploder" tires mounted like a deadly time bomb underneath the linebacker's SUV. The fury emerges from the fact that the university passed the linebacker through his math classes without him ever taking a math test during the entire six years he attended the university. The linebacker simply could not subtract the number displaying on the modern, digital tire gauge from the number posted on the inside of the vehicle door to see how much air each of the "Wilderness Exploders" would need. To make matters worse, the linebacker kept losing track of which tires had which amount of air pressure. His lack of memory forced him to recount the tires' pressure more times than a Palm Beach County, Florida voter punches a tally card while voting in a Presidential election. The athlete agent took the time to show the linebacker an easy way to figure out the tire pressure needed without having to multiply, divide, subtract, add or raise a number to the infinity power - a feat none of his professors ever took the time to do. Instead, the professors just kept asking him if he was prepared for the big game next weekend. The linebacker shows his gratitude with a big "thank you" and a greasy handshake. The linebacker then starts his SUV and takes off. Despite the correct air pressure in each tire, each tire explodes one by one and the truck immediately rolls over. The athlete agent turns his head, gasps in amazement, shouts for help, jumps onto the burning truck and opens the door. The linebacker sits un-
conscious, so the athlete agent unbuckles the seatbelt and lifts the 220-pound linebacker over his shoulder. The athlete agent jumps off the truck and runs, still carrying the linebacker over his shoulder. After reaching a distance of twenty yards, the truck explodes, closely mirroring a scene from Mission Impossible. The athlete agent then gives the linebacker CPR and saves his life. The agent gives the linebacker a medal of St. Joseph that the athlete agent always wears around his neck and says, "I think you need this more than I do. Wear it proudly. It will bring comfort and peace to your life as it has mine."

Oh, oh! The athlete agent just gave the linebacker a gift. Witnessing this, Sheriff Thoggs immediately arrests the agent and escorts him to jail. The judge, a big fan of the linebacker’s team, finds herself unhappy over the fact that the NCAA declares the linebacker ineligible to play and that the team thereby loses the SEC Title game due to a poorly executed defense without the star linebacker. In response, the judge sentences the agent to five years in the state penitentiary without eligibility for parole. The appellate court affirms the trial court’s decision - per curiam. The man next to the agent, who is in for armed robbery and seventeen counts of murder, smiles insanely and asks, "Man, what are you in for? Can I have that suit?" The agent ponders whether to respond with "I saved a college kid and gave him a token gift, and yes the suit should fit you nicely," or "I blew up a guy’s car with explosives and watched it burn to the ground with the driver in it, man. And no, the suit’s mine."

With the energy and intensity of a full court press, several state legislatures decided to regulate athlete agents. At current count, twenty-eight athlete agent statutes exist in the United States.¹ A

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twenty-ninth state enacted, but then subsequently repealed, athlete agent legislation.\textsuperscript{2} As will be demonstrated in this Article, athlete agent statutes invariably possess numerous defects that might preclude enforcement. Thus, only time will tell if such legislative activity serves any valuable purpose.

Part II of this Article will set forth the historical background underlying athlete agent legislation across the country. It will also discuss the regulatory scheme of the National Collegiate Athletic Association ("NCAA") and the reasons why twenty-eight states currently regulate athlete agents.\textsuperscript{3} Additionally, Part II questions the need for, and even desirability of, athlete agent legislation.

Part III of this Article will analyze the primary areas of athlete agent activity that states regulate. It will also analyze some constitutional defects and loopholes contained within the athlete agent statutes and provide athlete agents with a way to "slam dunk the statutory hurdles" through use of various escape routes gratuitously paved by the legislatures themselves via inartfully drafted legislation. Part III will also set forth some examples of the ludicrous results achieved by the states through such improvidently worded statutes. Additionally, Part III analyzes the Uniform Athlete Agents Act ("UAA"), recently approved by the National Conference of Commissioners on Uniform State Laws ("NCCUSL") at its 2000 annual conference.\textsuperscript{4} The NCCUSL spent many hours and thoughtfully drafted the UAA. To date, the UAA is one of the best athlete agent statutes in existence. As analyzed in Part III, however, the UAA does not attain perfection. Although some provisions could have been worded differently to achieve better results, the end result of the NCCUSL's efforts proves workable and far better than most state athlete agent statutes. Again, only time will tell if any


\textsuperscript{3} Some states also regulate athletes (as opposed to athlete agents only).

\textsuperscript{4} Readers can acquire a copy of the UAA through the NCCUSL's official Web site: http://www.nccusl.org. The annual conference occurred in St. Augustine, Florida during the week of July 28 - August 4, 2000. See id.
states will adopt the UAA – including those with and those without athlete agent legislation currently on their books.\textsuperscript{5}

\section{II. Historical Background: Should States Even Regulate Athlete Agents?}

\subsection{A. The Infamous Unscrupulous Athlete Agent/Law of Economics}

Many state legislatures hold a belief that agents exist on Earth as evil creatures or, at least, to cause evil consequences. The commonly held legislative belief that athlete agent activity constitutes “unscrupulous” behavior surfaces in some statutory declarations.\textsuperscript{6} Although this belief may possess some merit in limited circumstances, it surely fails as a broad principle.\textsuperscript{7} As will be demonstrated in the following discussion, one could go so far as to say that the NCAA deserves the “real culprit” title, not athlete agents.

The real reason legislatures enact athlete agent statutes directly transcends from the NCAA rules and regulations. Were it not for the NCAA, state legislatures likely would not find a need to regulate athlete agents.\textsuperscript{8} This statement is true even though some state statutes directly or indirectly include organizations other than the NCAA under their auspices.\textsuperscript{9} The underlying basis for this assumption (i.e., that states would not bother regulating agents “but for” the NCAA) finds its roots in the law of economics. Specifically,

\begin{itemize}
\item \textsuperscript{5} Twenty-eight states currently possess athlete agent legislation. For a list of these statutes, see supra note 1. Thus, twenty-three legislatures (twenty-two states and Washington, D.C.) currently maintain no such legislation.
\item \textsuperscript{6} See Fla. Stat. ch. § 468.451 (2000). Florida’s athlete agent statute, for example, provides: “The Legislature finds that dishonest or unscrupulous practices by agents who solicit representation of student-athletes can cause significant harm to student-athletes and the academic institutions for which they play. It is the intent of the Legislature to protect the interests of student-athletes and academic institutions by regulating the activities of athlete agents.” Id.; see also Colo. Rev. Stat. § 23-16-101 (1998).
\item \textsuperscript{7} See Rob Remis, Analysis of Civil and Criminal Penalties in Athlete Agent Statutes and Support for the Imposition of Civil and Criminal Liability Upon Athletes, 8 Seton Hall J. Sport L. 1, 35 n.127 (1998) (citing scandals involving athlete agents that appeared in print and courts over years such as FSU Footlocker Scandal).
\item \textsuperscript{8} See supra notes 1, 5 and accompanying text. Some states still might find the need to require athlete agents to hold occupational licenses. However, this constitutes speculation, and the fact remains that twenty-three jurisdictions still do not regulate agents at all – even with the NCAA regulations in place. See id.
\item \textsuperscript{9} See La. Rev. Stat. Ann. §§ 4:422.1, 4:424 (West 1999). For instance, Louisiana provides that athlete agents may not violate the rules promulgated by any “federation or association,” not just the NCAA. Id.; see also Diane Sudia & Rob Remis, Athlete Agent Solicitation of Athlete Clients: Statutory Authorization and Prohibition, 10 Seton Hall J. Sport L. 205, app. at 234-64 (2000) (citing additional states that do not limit their statutory scope to NCAA).
\end{itemize}
some NCAA sports such as men's football and basketball equate to "big money" for state schools and athletic programs.\(^\text{10}\) No other collegiate sports organization generates as much massive revenue as the NCAA. The financial stake for men's NCAA football alone quickly reaches the multi-million dollar threshold for Division I bowl game payouts.\(^\text{11}\) This number does not even include multi-million dollar television contract proceeds or other items of sports revenue.\(^\text{12}\) Since a state university potentially could lose this multi-million dollar revenue tree pursuant to the NCAA rules discussed below, the state interest in regulating athlete agent activity suddenly shines brightly. Hence, twenty-eight states currently regulate athlete agent activity.\(^\text{13}\) Even a cursory review of the twenty-eight statutes (especially those containing multiple references to the NCAA) clearly demonstrates that violation of NCAA rules remains the impetus for enactment and continual amendment of state athlete agent statutes.\(^\text{14}\) The following review of the NCAA regulations also demonstrates in greater detail exactly why states experience a need to protect themselves through enactment of athlete agent statutes.

B. NCAA: Historical Principle of Amateurism/ Limited Jurisdiction

The NCAA historically has prided itself on its principle of amateurism. Specifically, the NCAA expressed its "Principle of Amateurism" as follows: "Student-athletes shall be amateurs in an intercollegiate sport, and their participation should be motivated primarily by education and by the physical, mental and social benefits to be derived. Student participation in intercollegiate athletics is an avocation, and student-athletes should be protected from exploitation by professional and commercial enterprises."\(^\text{15}\) The NCAA's Constitution further provides: "A basic purpose of this Association is to maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body and, by doing so, retain a clear line of demarcation.

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10. See Remis, supra note 7, at 54-59 nn.212-41 and accompanying text.

11. See id. (listing bowl pay-outs to conferences on behalf of each team for 1997-1998 football season).

12. See id. Many other sources of revenue exist such as shoe and apparel contracts and coaches' weekly television shows. See id.

13. See generally supra note 1 (referencing athlete agent statutes).

14. See id.

tion between intercollegiate athletics and professional sports.”

One reason twenty-eight states maintain athlete agent legislation is to protect the athlete’s amateur status and the university upon violation of the NCAA’s principle of amateurism.

The NCAA’s limited or non-existent jurisdictional power is a second reason that states enact athlete agent legislation. Stated bluntly, only the federal government and the individual states possess the power to regulate agents; the NCAA simply lacks jurisdiction to regulate athlete agents. The NCAA is merely a voluntary organization with jurisdiction only over its member constituents (i.e., the colleges and universities that elect to join the NCAA). It does not even have jurisdiction over its athletes, and it must instead enforce its rules against its member institutions. In other words, if an athlete violates an NCAA rule or regulation, the NCAA will mandate that the member university not allow the athlete to participate further in intercollegiate sports. If the member institution refuses to comply with or otherwise violates NCAA rules, the NCAA sanctions the institution. Importantly, the NCAA can issue extremely harsh (even devastating) sanctions against colleges and universities for violation of NCAA rules, including, most severely, loss or forfeiture of multi-million dollar bowl payouts and television appearances (and associated television revenues).

C. Whom States Should Protect

States possess a strong interest in protecting several kinds of persons or entities. First, and of foremost concern, a state might feel an overwhelming need to protect its state-supported colleges

16. Id. § 1.3.1 (explaining basic purpose of competitive athletic programs).

17. See infra notes 18-22 and accompanying text (regarding method by which NCAA sanctions universities).


19. See id. (noting that NCAA has only indirect jurisdiction over student-athletes).

20. NCAA MANUAL, supra note 15, § 14.11.1. Specifically, the NCAA provides: “If a student-athlete is ineligible under the provisions of the constitution, bylaws or other regulations of the Association, the institution shall be obligated to apply immediately the applicable rule and to withhold the student-athlete from all intercollegiate competition.” Id. The institution may appeal to the Academics/Eligibility/Compliance Cabinet for restoration of the student-athlete’s eligibility as provided in § 14.12 if it concludes that “the circumstances warrant restoration.” Id.

21. See Remis, supra note 7, at 54-59 nn.212-41 and accompanying text.

22. See id. (citing large pay-outs and television rights as essential for each team).
and universities. The reason is self-evident: if a state-supported university loses or forfeits a multi-million dollar payout, that state-supported school will look to that state’s taxpayers for those same resources.

Second, states would also likely feel the need to protect the private universities located within the state’s physical borders. Private universities obviously offer many advantages to a state and loss of a multi-million dollar payout to an in-state private university easily seems to warrant state protection as well.23

Third, a state has an interest in protecting its own citizens (i.e., the athletes, coaches, other students and employees who would suffer at the loss of a multi-million dollar payout to the university). If a state loses a multi-million dollar NCAA payout, even non-athletic programs will suffer, because the university would need to find money from some other source in order to support athletics (i.e., athletics might take away funds from a Biology department to offer scholarships or professorial contracts to potential future Nobel prize winners).

Fourth, out-of-state residents who attend the university would also suffer from the university’s loss of millions of dollars through items such as lost scholarship opportunities. Finally, athletes declared ineligible by the NCAA from further intercollegiate athletics participation for violating the amateurism principle likely would suffer lost employment opportunities with professional sports organizations such as the National Football League. To an athlete, these lost employment opportunities could mean the loss of multi-million dollar contracts (or at least the signing of less valuable contracts).

In sum, when one examines the devastating consequences to a state and its individual and institutional residents and citizens, blaming a state or the NCCUSL for enacting an athlete agent statute (or amending one already enacted) becomes increasingly difficult. If neither the NCAA nor the educational institution can regulate athlete agents due to lack of jurisdictional power, the state faces losing millions of dollars due to athlete agent actions that cause student-athletes and/or institutional personnel to violate NCAA rules.

23. The benefits of having a private university within a state is well beyond the scope of this Article. One would be hard-pressed to argue that Massachusetts would not care about losing Harvard or Connecticut would not care about losing Yale. The prestige, national research dollars and bright students brought into the local economy and social structure alone generate a state interest in protecting these entities.
D. Potential Dangers Athlete Agents Pose to States

1. Executing Contracts

Despite the devastating financial wrath that can be wrought upon states through NCAA sanctions, it remains relatively easy (theoretically at least) to decipher what NCAA rules apply to athlete agents. Because the NCAA does not regulate athlete agents due to lack of jurisdiction, one must analyze those NCAA regulations governing athletes and their relationship to other individuals.24 Upon examination of the great amount of regulations contained within the NCAA Division I Manual, one notes that very few provisions actually relate to athletes' relationships with athlete agents.25 In fact, there are basically only two areas of concern to the NCAA regarding athlete agents. First, the NCAA prohibits student-athletes from executing contracts with athlete agents, thereby prohibiting athlete agents from representing student-athletes in negotiations with professional sports teams.26 A more detailed analysis of the NCAA rules regulating contract execution lies beyond the scope of this Article but is addressed in another Article.27 It is important, however, to note that the NCAA prohibits not only written contracts but verbal agreements as well.28 This NCAA prohibition against agent contracts obviously relates back to the NCAA's stated goals of preserving amateurism and retaining the clear line of demarcation between intercollegiate athletics and professional sports.29 If an athlete agent represents the student-athlete in negotiations with professional teams while the student-athlete still competes in intercollegiate athletics, the NCAA's "clear line" of demarcation between intercollegiate athletics and professional sports loses focus and blurs profusely.

2. Bestowing Gifts

The second area of concern to the NCAA regarding athlete agents relates to gifts. Without exception, the NCAA prohibits student-athletes from accepting gifts from athlete agents.30 Again, this

24. See supra note 18 and accompanying text (regarding NCAA's lack of jurisdiction over athlete agents).
26. See id. §§ 12.3.1-12.3.2.1.
27. For a more detailed analysis of the NCAA's contractual prohibitions and requirements, see Diane Sudia & Rob Remis, Athlete Agent Contracts: Legislative Regulation, 10 Seton Hall J. Sport L. 317 (2000).
29. See supra notes 15-16 and accompanying text.
NCAA prohibition relates back to its goal of preserving amateurism and retaining a clear line between intercollegiate athletics and professional sports. Accordingly, allowing one student-athlete to drive to school in a limousine and live in a $2,000,000 mansion (transportation and living expenses provided, of course, by an "unscrupulous" athlete agent), while other student-athletes live in poverty and barely have enough groceries to survive, convincingly bestows an unfair benefit upon one student-athlete over others. In turn, that student-athlete might be more rested, fed, energized, physically fit, happy, and emotionally stable than other athletes on game day. This surely would compromise the integrity of intercollegiate sports, especially considering that the NCAA historically and valiantly prides itself on promoting its principle of amateur athleticism. In other words, the NCAA desires that student-athletes compete solely for the pure joy and spirit of competing while simultaneously obtaining a solid education (rather than competing for money).

A more detailed analysis of the NCAA rules regulating gifts to athletes is beyond the scope of this Article but is addressed in another Article. One item worthy of mentioning, however, is that whether a non-paid student-athlete competes on the same or opposing team of a paid student-athlete escapes relevance. If the non-paid student-athlete competes on the opposing team, the paid athlete might be better, stronger, faster, better nourished and better rested. The resulting win for the paid athlete becomes tainted (assuming the paid athlete still practices and gets to the playing field on game day to win instead of lounging on his new leather couch eating ice cream all day until he can no longer get off the couch to get to the playing field). Similarly, if a non-paid student-athlete competes on the same team as the paid athlete, the paid athlete might earn more awards (e.g., All-American, Heisman Trophy and breaking school, conference and NCAA records). Further, scouts for professional teams might find the paid athlete more talented, when in reality and unbeknownst to the scouts, the paid athlete's performance resulted not from being more gifted, but simply from being better fed and rested. In turn, the professional teams might draft the paid athlete over the non-paid athlete and/or pay him more money. Such a result again seems to taint not just the particu-

31. See supra notes 15-16 and accompanying text.
32. See id.
33. See Diane Sudia & Rob Remis, Statutory Regulation of Agent Gifts to Athletes, 10 SETON HALL J. SPORT L. 265 (2000).
lar game but also the integrity of the entire NCAA competition structure. Thus, the NCAA prohibits student-athletes from executing contracts with, and accepting gifts from, athlete agents.34

E. NCAA Deregulation: Is the NCAA the Real Culprit?

As noted above, the NCAA historically has premised and justified its existence on the principle of preserving and promoting the integrity of amateur, intercollegiate athletics and the resultant educational value.35 Interestingly, the NCAA recently decided to explore whether it should deregulate its amateurism principle. In fact, the NCAA's Vision Statement for amateurism deregulation provides, in pertinent part:

[S]ome prospects lost all or a significant amount of their collegiate eligibility for violations that did not result in any competitive advantage, while other prospects who participated in extensive organized competition and gained significant competitive advantage were able to enjoy four seasons of collegiate competition . . . . Ultimately, as deregulation continues as an ongoing process, it will result in legislation that is consistent and reasonable while preserving the uniqueness and integrity of intercollegiate athletics.36

Accordingly, until we know whether and to what extent the NCAA ultimately deregulates amateurism, the future value of state athlete agent statutes will remain unclear. Only time will tell which course the NCAA will pursue and what effect such course will have on intercollegiate sports.

Assuming the NCAA continues its current prohibitions on agent contracts and gifts, one cannot help but question whether the NCAA's principle of amateurism possesses any merit in today's sports marketplace. As previously noted, the true driving force behind a state's enactment of an athlete agent statute lies in the financial devastation that the NCAA potentially could inflict upon a college or university and, indirectly, the athlete and state.37 The financial havoc, as it concerns athlete agents, arises solely because an agent executes a contract with, or provides a gift to, an athlete.

34. See supra notes 26, 30 and accompanying text.
35. See supra notes 15-16 and accompanying text.
36. The entire text of the NCAA's vision statement can be obtained from the NCAA's official Web site: http://www.ncaa.org/agents_amateurism.
37. See supra notes 6-23 and accompanying text.
Once this occurs, the NCAA deems the athlete ineligible and unable to compete further in that particular sport. As noted earlier, if the athlete does compete after becoming ineligible and the NCAA learns of the infraction, the NCAA can sanction the university by requiring it to forfeit or pay back a multi-million dollar payout. In other words, “but for” the NCAA regulations, an athlete agent could sign a contract with an athlete and provide gifts to an athlete.

The critical significance of this predicament emerges when one considers the harsh penalties that athlete agent statutes may thrust upon agents in many states. As noted below, many states deem it a criminal offense for an athlete agent to cause an athlete or university to violate an NCAA rule. Many of these states deem such agent action as felonious, rather than misdemeanor, in nature. Furthermore, if an agent merely provides a student-athlete with a ride home from a game, such agent action causes the athlete to violate an NCAA regulation (i.e., accepting a benefit not available to the general student body – thus accepting an impermissible gift from the agent). It would likely appall many individuals to learn that a court could send an agent to jail for a very long time and fine her thousands of dollars, merely for giving an athlete a ride home. The scenario becomes even more distressing when one learns that this could happen even if the agent did not say two words about signing a contract or representing the athlete to the athlete during the entire ride home. Neither the statutes nor the NCAA rules differentiate between “caring” and “selfishly-motivated” athlete agent acts. The NCAA rules serve as the only vehicle for which an athlete agent potentially could go to jail for merely providing a ride home to an athlete. Indeed, society generally does not imprison people for acting kindly toward other human beings (assuming things such as bribery of a government official do not occur).

Yet, what is a state to do? The NCAA rules place states in a “no-win” situation. A state’s only choice is either to allow athlete agents

38. See NCAA Manual, supra note 15, § 12.3.1. Athletes can be deemed ineligible for all sports, or just the particular sport in which the violation occurred, depending on the circumstances. See id.
39. See infra notes 78-125 and accompanying text.
40. See infra Appendix B.
41. See Remis, supra note 7, at 54-59 nn.212-41 and accompanying text, apps. C & D (detailing specific criminal treatment of athlete agent conduct in each state).
42. See generally Sudia & Remis, supra note 38 (detailing NCAA prohibited gifts).
to cause athletes and/or university personnel to violate NCAA rules without remorse or, alternatively, to regulate and punish the agents for causing such violations. It is interesting to note, though, that the NCAA's somewhat self-righteous claim of preserving the spirit and integrity of intercollegiate athletics seems contradictory at best. For example, the going salary rate for coaches of top football programs constantly rises, currently equaling $1 million.\textsuperscript{43} Three years ago only Steve Spurrier and Bobby Bowden were above the $1 million threshold, whereas currently fourteen coaches now earn such salaries.\textsuperscript{44} Expectations are that soon twenty of the 114 Division I-A coaches will join this "millionaire-coaches-club."\textsuperscript{45} Currently, Steve Spurrier receives an annual salary of $2.1 million to coach the Florida Gators, and Bobby Bowden receives $1.5 million to coach the Florida State University Seminoles.\textsuperscript{46} Other schools topping the $1 million dollar mark include Oklahoma, Auburn, LSU, Clemson, Tennessee, Texas, Ohio State, Washington, Kansas State, Wisconsin, Texas A&M and Virginia Tech.\textsuperscript{47} Furthermore, coaches earn additional sources of income (other than from their universities) such as monies derived from shoe and apparel endorsement contracts and radio and television appearances.\textsuperscript{48}

As noted earlier, the NCAA expressed its "Principle of Amateurism" as follows: "Student-athletes shall be amateurs in an intercollegiate sport, and their participation should be motivated primarily by education and by the physical, mental and social benefits to be derived. Student participation in intercollegiate athletics is an avocation, and student-athletes should be protected from exploitation by professional and commercial enterprises."\textsuperscript{49} It thus appears that when it comes to making money off of a student-athlete's talent, the NCAA does not primarily concern itself with exploitation of student-athletes by coaches and universities, but rather just by athlete agents and professional sports teams.\textsuperscript{50} In the

\textsuperscript{43} See Kelly Whiteside & David Leon Moore, \textit{Top Programs Pay the Going Rate: Beamer Latest to Become a Millionaire}, USA TODAY, Nov. 28, 2000, at 6C.

\textsuperscript{44} See Thomas O'Toole, \textit{Plan on $1 Million to Lure Top Coaches}, USA TODAY, Nov. 28, 2000, at 8A.

\textsuperscript{45} See id.

\textsuperscript{46} See id.

\textsuperscript{47} See id. (stating, "Private schools generally don't release salary figures.").

\textsuperscript{48} See Whiteside & Moore, supra note 43, at 6C.

\textsuperscript{49} See NCAA MANUAL, supra note 15, § 2.9.

\textsuperscript{50} See generally NCAA MANUAL, supra note 15 (addressing mainly athlete agents and professional sports teams). Of course the NCAA does concern itself with exploitation of athletes by universities in that the NCAA Manual contains numerous rules on things such as credit hour requirements and years of eligibility to
NCAA's eyes, athletes should not make money but coaches and universities may make obscene amounts of money from the student-athletes' talents and hard work.

Further, as for the NCAA's desire to preserve the integrity of intercollegiate sports, one might have difficulty claiming that integrity and fair play exist when schools such as Florida State University and the University of Florida recruit the best students year after year. It may be difficult to find integrity when these same schools also have far larger budgets due to more generous alumni donations to these schools over "non-big-name" schools. In other words, the odds may be stacked in favor of some "big-time" schools and their student-athletes – despite the NCAA's claim of integrity and preservation of the spirit of intercollegiate athleticism. NCAA sports may not truly involve the preservation of the integrity and educational value of intercollegiate athletics because all teams in Division I-A football do not possess a fairly equal chance at winning games. The University of South Carolina does not have the same chance at the beginning of the year at playing for the national Division I-A football title as Florida State University does. Pre-season team rankings by the Associated Press and coaches may indicate that some schools acquired better recruits than other teams during the off-season. The fact that "big-time" college football schools consistently show average home attendance of up to 100,000 fans may give a psychological and competitive advantage for winning home games (especially considering the advantage of the home crowd noise factor). Some schools may have an endless recruiting advantage because the best recruits usually prefer to enroll in schools with winning records and chances for bowl appearances. At least the NFL established salary cap and draft restrictions to ensure that every team in the NFL theoretically can go to and win the Super Bowl, thereby ensuring continual fan interest and support in every city (not just the cities of some powerhouse teams).

A $2.1 million salary for a coach may not be truly reflective of preserving the "true spirit" of intercollegiate athletics. Rather it may be more reflective of winning at all costs – with some schools and athletes having more funds and financial resources with which to play consistently (unlike the NFL, which tries to ensure equality among all teams in the league). NCAA football and basketball may be on the same level today as the professional leagues, with the exception that at the NCAA level the coaches and universities keep all

ensure that athletes are not exploited solely for their athleticism and do graduate in a timely fashion. See id.
the money, and athletes get nothing. This fact alone suggests that the NCAA "exploits" athletes more than professional teams that pay the athletes millions of dollars and much more than they pay the professional coaches (and more than the athlete agents who only take a small percentage fee of the athlete's salary rather than the NCAA, which gives the athlete no salary and keeps it all for itself and the coaches).

Yet, the NCAA does not concern itself with all of these truths. The NCAA does, however, prohibit an athlete from merely verbally agreeing with an agent in the athlete's senior year to be represented in the future (i.e., not now) in the athlete's contract negotiations following the NFL draft, when the athlete has graduated and no longer plays intercollegiate athletics.51 One could certainly question whether the NCAA rules really achieve their goals of preserving the spirit and educational value of intercollegiate athletics while simultaneously preventing exploitation of athletes from unscrupulous forces. The coaches' salaries alone prove this point. Furthermore, most coaches, on top of their lucrative salaries, make their student-athletes wear clothing and/or shoes made by a certain manufacturer so that the coach can receive even more income for himself or herself (rather than being primarily concerned with whether a particular brand would protect the athletes' feet and legs better).52

III. ATHLETE AGENT STATUTES/UNIFORM ATHLETE AGENTS ACT

Regardless of the merits of the NCAA's claims of preserving amateurism and preventing exploitation of athletes, the NCAA rules are likely here to stay, so states must deal with them in some fashion (either through legislation to protect their interests or through potential loss of millions of dollars with little or no recourse against the athlete agent).53 Even if the NCAA eventually deregulates amateurism, it currently prohibits student-athletes: (1) from executing contracts with agents, and (2) from accepting gifts, and the NCAA sanctions universities for playing ineligible student-

51. See supra note 28 and accompanying text.
52. See Remis, supra note 7, at 56 n.225. Former Georgetown coach, John Thompson, pioneered shoe contracts for coaches. At one time, Thompson served on Nike's Board of Directors, owned shares of Nike stock worth more than $2 million and earned a $350,000 Nike consulting fee. See id.
53. Recourse could be sought through a state's common law or other statutory law (such as a deceptive trade practices act). It is unlikely, however, that any such laws would prohibit an athlete agent from executing a contract with, or making a gift to, another individual (i.e., the athlete).
athletes. Consequently, states must deal with the issue either by regulating and punishing agents or simply by allowing agents to cause NCAA violations without penalty. As previously noted, the fact that universities and colleges, and indirectly the state, can lose or forfeit multi-million dollar payouts encouraged twenty-eight states to enact athlete agent legislation. The following discussion demonstrates some of the typical statutory provisions contained within the twenty-eight athlete agent statutes and various ways for athlete agents to escape such regulation.

A. Statutory Provisions

1. Definitions

A review of the twenty-eight athlete agent statutes reveals that each statute contains both similarities and differences to the athlete agent statutes of sister states. As evidenced in Appendix A, each statute and the UAA have a section containing definitions. This may appear rudimentary in that most statutes (not just athlete agent statutes) wisely include a definitions section. However, as will be discussed below, the peculiar significance of the definitions sections lies in the way with which the twenty-eight legislatures improvidently defined various statutory terms. These terms provide athlete agents with ways to avoid regulation altogether (i.e., self-defeating definitions).

The similarities continue in that not only does each state contain a definitions section, but also some particular terms within those sections appear in almost every state statute and the UAA. For example, the UAA and every state (except Indiana and Minnesota) define the term “athlete agent” or “sports agent.” The UAA and every state (except Iowa, Minnesota and Nevada) define the term “agent contract.” Most states and the UAA include “athlete” and/or “student-athlete” within their definitions section as well.

Even though similarities abound regarding the definitions sections, a certain uniqueness and peculiarity nonetheless exists with respect to each of the twenty-eight athlete agent statutes and the UAA. First, the definitions sections vary as to the number of terms defined and in the way identical terms are defined in each state and

54. See infra Appendix A; see also supra note 1.
55. See id. Although all of these states utilize the term “agent contract,” the UAA refers to the same instruments as “agency contracts” in its definition. See UAA, supra note 4, § 2.
56. See UAA, supra note 4, § 2.
the UAA. Additionally, most state athlete agent statutes contain one or more terms that appear only in their own definitions section and not in those of any sister states' statutes. For example, only Louisiana defines the term "federation or association." It is also interesting to compare the twenty-eight state statutes with the UAA. Some terms appear in one or more state statutes but not in the UAA (e.g., the UAA does not define the term "athlete" like eleven states do, but it does define the term "student-athlete" as do fourteen other states). Additionally, the UAA does not define the terms "financial services" or "financial services contract" even though ten state statutes define one of these terms and even though many athlete agents provide various types of financial services to athletes. Similarly, the UAA contains some terms that none of the twenty-eight statutes defined, such as "record," "registration" and "intercollegiate sport.

2. Other Provisions

Appendix B demonstrates some of the primary regulatory provisions most commonly contained within the twenty-eight athlete agent statutes and the UAA. First, the issue arises as to whether an athlete agent must register with the state in which she conducts her athlete agent business. Twenty-two states require agent registration prior to the agent conducting business in the state, although some states and the UAA provide for temporary licensure so that agents may conduct business while their application is pending. The agent's obligations to the state, however, do not end with licensure. Instead, fourteen states and the UAA call for various record keeping and reporting requirements. Further, twenty-one states and the UAA impose obligations on the athlete agent to provide various notices to the state and/or educational institution attended by the

57. See infra Appendix A. For example, the UAA defines twelve terms. See UAA, supra note 4, § 2. In contrast, Nevada only defines two terms. See Nev. Rev. Stat. § 597.920 (1997).
59. See infra Appendix A; see also UAA, supra note 4, § 2.
60. See id. For an analysis of the numerous functions athlete agents perform for their athlete clients including financial services, see Remis, supra note 7, at 6 nn.12-16 and accompanying text.
61. See UAA, supra note 4, § 2; see also infra Appendix A.
62. See, e.g., UAA, supra note 4, § 8; see also infra Appendix B; Remis, supra note 18, at 428-41 nn.30-97 and accompanying text (detailing registration requirements mandated by athlete agent statutes).
63. See, e.g., UAA, supra note 4, § 13; see also infra Appendix B; Remis, supra note 18, at 444-47 nn.111-24 and accompanying text (analyzing reporting requirements imposed by athlete agent statutes).
athlete (e.g., pre-contractual or post-contractual notice of the existence of a contract between the agent and an athlete).\textsuperscript{64} Some statutes, as well as the UAA, require the athlete (not just the agent) to provide various notices to the state or educational institution.\textsuperscript{65} Similarly, twenty-four states and the UAA impose obligations on the athlete agent to provide various notices to the athlete, usually in the form of a warning on the face of the contract itself regarding the consequences to the athlete upon signing the contract with the agent.\textsuperscript{66} Such notices, when required on the contract, usually must appear in boldface, capital letters or otherwise conspicuous type to ensure the athlete recognizes and appreciates the severity of the consequences upon signing the agent contract.\textsuperscript{67} Agents must keep in mind that players' associations also mandate certain registration, reporting and notice requirements.\textsuperscript{68}

A prime concern of athlete agents is that all state statutes and the UAA contain some type of remedy or penalty provision. Twenty-three states and the UAA provide for civil legal relief against the athlete agent, although states differ as to whether the actions may be brought by the athlete, educational institution, state and/or other injured party.\textsuperscript{69} Under the UAA, only the educational institution may bring suit.\textsuperscript{70} Further, the UAA limits the educational institution to suing the athlete agent or former student-athlete.\textsuperscript{71} Thus, the UAA provision implicitly means that an educational institution cannot sue a current student-athlete for violating the athlete agent statute, even if the student-athlete is a freshman at the time of the violation, which causes the educational institution to lose millions

\textsuperscript{64} See, e.g., UAA, supra note 4, § 11; see also infra Appendix B; Remis, supra note 18, at 444-47 nn.111-24 and accompanying text (listing numerous types of filing requirements typically imposed on athlete agents with respect to states and educational institutions).

\textsuperscript{65} See, e.g., UAA, supra note 4, § 11.

\textsuperscript{66} See, e.g., id. § 10; see also infra Appendix B; Remis, supra note 18, at 444-47 nn.111-24 and accompanying text (listing numerous types of notice requirements commonly required of athlete agents with respect to athletes).

\textsuperscript{67} See, e.g., UAA, supra note 4, § 10.

\textsuperscript{68} See Remis, supra note 18, at 449-57 nn.133-61 and accompanying text (analyzing how various players' associations regulations coincide and/or conflict with mandates of various state athlete agent statutes).

\textsuperscript{69} See, e.g., UAA, supra note 4, §§ 16-17. For an analysis of whom may bring a civil cause of action in the various states (i.e., athlete, university, state or other injured party), see Remis, supra note 7, at 17-20 (noting that, in addition to states' provisions for civil penalties, many statutes also authorize private causes of action).

\textsuperscript{70} See UAA, supra note 4, § 16(a) ("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].").

\textsuperscript{71} See id.
of dollars and even if the statute of limitations runs on the particular cause of action before the student-athlete graduates (which could be six years down the road).

The particular type of legal relief available also differs by jurisdiction, including money damages, court costs, attorney fees, punitive damages and/or treble damages.\(^\text{72}\) Twenty-six states and the UAA provide for equitable relief against the athlete agent, including, non-exhaustively: injunctions, suspension or revocation of the agent’s license, voiding of agent contracts executed with athletes, forfeiture of surety bonds, forfeiture of rights to repayment of funds advanced to athletes and/or refunds of consideration paid by athletes to the agent.\(^\text{73}\) Thirteen states and the UAA also provide for an administrative penalty against the athlete agent.\(^\text{74}\) The UAA recommends $25,000 but leaves the exact monetary amount for the states to decide.\(^\text{75}\)

Even more frightening to athlete agents, twenty-six states and the UAA provide that athlete agent violations of the statute constitute criminal offenses; they are either felonies or misdemeanors, depending on the jurisdiction and the particular offense.\(^\text{76}\) The UAA recommends criminal treatment of the offense, but it leaves the specific classification of the crime up to the states; the UAA does not recommend treating the offense as either misdemeanor or felonious, but instead, it includes both as options in its recommended criminal provision.\(^\text{77}\)

B. Slam Dunking the Statutory Hurdles

With all the complicated and onerous athlete agent statutes in existence, athlete agents need some way of determining how to avoid being sued, fined and/or imprisoned. Considering the multimillions of dollars potentially at stake pursuant to a civil lawsuit brought against an agent by a university, the risk of such penalties looms like a funnel cloud over all of the agent’s activities. Fortunately, most of the athlete agent statutes were poorly drafted (to

\(^{72}\) See, e.g., id. § 16(b) (stating potential damages from violation of Act).

\(^{73}\) See id. §§ 4, 7; see also infra APPENDIX B.

\(^{74}\) See UAA, supra note 4, § 17 (stating that civil penalty against athlete agent is not to exceed $25,000); see also infra APPENDIX B.

\(^{75}\) See UAA, supra note 4, § 17.

\(^{76}\) See id. § 15; see also infra APPENDIX B. For a more detailed analysis of the particular crime classification for each state (i.e., felony or misdemeanor), see Remis, supra note 7, apps. C & D, at 22-23, 63-72.

\(^{77}\) See UAA, supra note 4, § 15 (stating that criminal penalties are left to states due to wide variation in existing acts).
varying degrees), thus providing the agent with some needed breathing room. The following discussion will outline the various steps an athlete agent can take to avoid civil liability or criminal conviction upon being sued or prosecuted under a particular athlete agent state statute. 78

1. Constitutional Vagueness Doctrine/Definitions

The first step in escaping athlete agent legislation entails the constitutional doctrine of vagueness. Laws become void for vagueness, and thus have no effect, if they do not define clearly their prohibitions. 79 Our laws must provide people of ordinary intelligence a reasonable opportunity to know what conduct a statute prohibits so that they may act accordingly. 80 Vague laws serve as a trap for innocent people by failing to provide them with fair warning. 81 In other words:

Statutes that are insufficiently clear are void for three reasons: (1) to avoid punishing people for behavior that they could not have known was illegal; (2) to avoid subjective enforcement of the laws based on "arbitrary and discriminatory enforcement" by government officers; and (3) to avoid any chilling effect on the exercise of First Amendment freedoms. 82

In the athlete agent context, several provisions contained within many of the athlete agent statutes defy clarity to say the least. Most importantly, a great source of this vagueness and ambiguity lies in the definitions sections of the statutes. For example, Mississippi’s statute defines “athlete agent” by referencing individuals

78. It is beyond the scope of this Article to analyze in great detail the numerous ways in which athlete agents may attack each of the particular athlete agent statutes currently in existence. For such an analysis, see Rob Remis & Diane Sudia, Escaping Athlete Agent Statutory Regulation: Loopholes and Constitutional Defectiveness Based on Tri-Parte Classification of Athletes, 9 SETON HALL J. SPORT L. 1 (1999) (explaining how various loopholes, vagueness and statutory defects work as to render athlete agent statutes virtually powerless).

79. See Peoples Rights Org., Inc. v. City of Columbus, 152 F.3d 522, 533 (6th Cir. 1998) (citing Grayned v. City of Rockford, 408 U.S. 104, 108 (1972)) (noting that Supreme Court has explained how vague laws offend several important values).

80. See id. (observing that this must be done under assumption that people are free to steer between lawful and unlawful conduct).

81. See id.

82. Foti v. City of Menlo Park, 146 F.3d 629, 638 (9th Cir. 1998) (citing Grayned, 408 U.S. at 108-09).
who have certain contact with an “athlete.”83 The statute does not
define the term “athlete,” but it does define the term “Mississippi
NCAA athlete,” which references remaining intercollegiate eligibil-
ity.84 The statute contains provisions that prohibit any conduct by
an athlete agent involving “athletes,”85 and other provisions of the
statute prohibit only that conduct involving “Mississippi NCAA ath-
etes.”86 This vagueness makes it very difficult to understand which
dealings with athletes potentially may subject the agent to liability.
To complicate the issue further, some statutory provisions explicitly
distinguish between “athletes” and “Mississippi NCAA athletes.”87
The statute also prohibits some conduct involving “NCAA athletes,”
which is another term not defined in the statute.88 Determining
which type of conduct will subject an athlete agent to liability there-
fore becomes an arduous task at best.

Oklahoma provides yet another example of inartful and vague
statutory drafting. Oklahoma parallels Mississippi in that the stat-
ute defines the terms, “athlete agent” and “Oklahoma NCAA ath-
ete.”89 The Oklahoma statute then includes within the definition
of “athlete agent” the term “athlete,” a term that the statute does
not define.90 The Oklahoma legislature then proceeded to define
the term “Oklahoma non-NCAA athlete” and made several provi-
sions of the statute applicable only to such athletes.91 The end re-
sult achieved by Oklahoma amounts to a statutory piece of artwork
containing incomprehensible definitions and provisions.

Athlete agents reading the Oklahoma statute should not feel
embarrassed for experiencing any inevitable confusion because the
Oklahoma legislature appears to have confused itself with its
strange set of mangled definitions and provisions.

83. See Miss. Code Ann. § 73-41-1(b) (1997) (defining “athlete agent” as one
who “directly or indirectly, recruits or solicits an athlete”).
84. See id. § 73-41-1(e).
85. See id. § 73-41-11(g) (stating rules for executing contract with “athlete
before completion of athlete’s last intercollegiate sports contest).
86. See id. § 73-41-3 (discussing contact with “Mississippi NCAA athlete” prior
to registering as agent with Mississippi Secretary of State).
87. See id. § 73-41-11(g) (prohibiting agents from “enter[j]ing] into any agree-
ment, written or oral, by which the athlete agent will represent the athlete, or give
anything of value to a Mississippi NCAA athlete, until after completion of the ath-
lete’s last intercollegiate sports contest, including postseason games”).
88. See Miss. Code Ann. § 73-41-11(e) (explaining division of fees and receipt
of compensation for “NCAA athlete” from professional sports league or franchise).
91. See id. § 821.61(A)(5); see also id. § 821.62(A)(2) (prohibiting contact be-
tween athlete agents and certain “Oklahoma non-NCAA athletes”).
sions, the Oklahoma legislature actually protects "Oklahoma non-NCAA athletes" over "Oklahoma NCAA athletes." After reading through several definitions and other statutory provisions, one discovers that in some parts of the statute, Oklahoma extends statutory protection only to "Oklahoma non-NCAA athletes" who, by definition, comprise those Oklahoma residents who are not eligible to participate in intercollegiate athletics at an Oklahoma NCAA institution of higher education. Mississippi and Oklahoma provide merely two examples of the vague definitions contained within many athlete agent statutes that render it nearly impossible to determine which type of conduct will subject an athlete agent to liability.

2. Constitutional/Jurisdictional Defects

Another way for agents to "slam dunk the statutory hurdles" lies in the unconstitutional exercise of jurisdiction over non-resident athlete agents. In order to control and penalize the actions of a non-resident defendant (i.e., the athlete agent), the state must possess personal jurisdiction over the defendant. In deciding whether a state possesses personal jurisdiction in a given set of circumstances, courts must apply a two-pronged analysis. First, in diversity cases, courts must determine whether jurisdiction is authorized by a particular state's long-arm statute. Second, courts must decide whether the Due Process Clause of the Fourteenth Amendment will be violated by the exercise of jurisdiction over the defendant. Whenever a state's long-arm statute attempts to exercise jurisdiction to the extent consistent with due process, courts only need to follow the dictates of the United States Constitution.

92. See id. § 821.63.
93. See id. (regarding agent contracts with Oklahoma non-NCAA athletes). To understand further this bizarre set of statutory definitions, see Remis & Sudia, supra note 78, at 29-34 (observing that such terms and definitions allow loopholes for agents to escape responsibility under statute).
94. For a more in-depth analysis of the vagueness inherent in many statutes, see Remis & Sudia, supra note 78 (discussing various state statutes and their differing terms and regulations).
96. See id. (citing Buillon v. Gillespie, 895 F.2d 213, 215 (5th Cir. 1990); see also Fed. R. Civ. P. 4(e)).
97. See Mieczkowski, 997 F. Supp. at 784 (citing Ham v. La Cienega Music Co., 4 F.3d 413, 415 (5th Cir. 1993)).
98. See id. (citing Wilson v. Belin, 20 F.3d 644, 647 (5th Cir. 1994)).
With respect to personal jurisdiction, due process imposes two requirements. First, the defendant (i.e., athlete agent) must have "minimum contacts" with the forum state. Second, the state's exercise of personal jurisdiction must not offend "traditional notions of fair play and substantial justice." The "minimum contacts" analysis separates jurisdiction into two classifications: (1) "specific" personal jurisdiction; and (2) "general" personal jurisdiction. "Specific jurisdiction exists when the nonresident defendant's contacts with the forum state arise from, or are directly related to, the cause of action. General jurisdiction exists when a defendant's contacts with the forum state are unrelated to the cause of action but are 'continuous and systematic' and considered substantial." A finding of general jurisdiction requires more extensive contact with the forum state than does a finding of specific jurisdiction. In the athlete agent context, the athlete agent statutes flourish with unconstitutional attempts at obtaining jurisdiction over nonresident athlete agent defendants. The Ohio statute serves as one of the worst abuses of due process principles. The Ohio statute provides that "a court may exercise personal jurisdiction over an athlete agent who resides or engages in business outside [Ohio] as to a cause of action arising from the athlete agent entering into an agent contract with a student-athlete outside [Ohio] without complying with section 4771.02 of the Revised Code." A reading of this one sentence from Ohio's statute demonstrates its obvious unconstitutional stretch of jurisdictional power, attempting to reach athlete agents who have had absolutely no contact with the forum state (i.e., Ohio) — much less the requisite "minimum contacts" required under the Due Process Clause of the Fourteenth Amendment.

99. See id. (citing Asahi Metal Indus. v. Superior Court, 480 U.S. 102 (1987); Burger King Corp. v. Rudzewicz, 471 U.S. 462, 471-72, 476 (1985); Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945); Wilson, 20 F.3d at 647; Polythene Sys. v. Marina Ventures Int'l, 993 F.2d 1201 (5th Cir.1993)).

100. Id.

101. Id.

102. See Mieczkowski, 997 F. Supp. at 784 (citing Wilson, 20 F.3d at 647).

103. Id. (citations omitted).

104. See id. at 785 (citing Bearry v. Beech Aircraft Corp., 818 F.2d 370, 374 (5th Cir. 1987)) (noting that general jurisdiction will only be found when defendant's contacts in forum state are "continuous and systematic").


106. See supra notes 97-105 and accompanying text. For more examples of statutes improperly asserting jurisdiction over non-resident athlete agents, see Remis & Sudia, supra note 78.
3. Explicit Exemptions/Implicit Loopholes

Fortunately for athlete agents, some states explicitly exempt certain individuals from the regulatory scope of the statute or accomplish the same result through implicit loopholes buried within the statute. Unfortunately, however, finding those exemptions and loopholes can prove incredibly challenging. Quite simply, the countless explicit exemptions and implicit loopholes remain far too complex and numerous to warrant a detailed discussion in this Article, but they are addressed more fully in another Article.107 A few examples, however, should enlighten the reader as to how these exemptions and loopholes appear and work to the agent's benefit.

Some states explicitly exempt from the definition of "athlete agent" those individuals who are employees or other representatives of a professional sports team.108 Likewise, California exempts some, but not all, "talent agencies" from the statutory definition of athlete agent.109 California further exempts athlete agents when acting solely for their "spouse, child, foster care ward, or grandchild."110 Some statutes contain provisions that apply to agent conduct involving "student-athletes" only; agents must be extremely cautious, therefore, as many statutes have provisions that apply to "student-athletes" only, while other provisions may apply to any athlete (i.e., professional, student and/or amateur).111

To make matters worse, athlete agents must exercise extreme caution prior to contacting almost anyone in some states, including those states eventually adopting the UAA. For example, the UAA defines "student-athlete," as follows: "an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport;" if an individual is "permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student-athlete for purposes of that sport."112 Thus,

107. For an in-depth analysis of what exemptions and loopholes exist within the twenty-eight athlete agent statutes, see Remis & Sudia, supra note 78. For a detailed listing of those numerous exemptions and loopholes, see id. app. C at 96-122.

108. See, e.g., Ala. Code § 8-26-2(3) (1993). It should be noted that many athlete agent statutes also contain restrictions on athlete agent income. For a separate analysis of the ethical and statutory restrictions on athlete agent income, see Diane Sudia & Rob Remis, Ethical and Statutory Limitations on Athlete Agent Income: Fees, Referrals and Ownership Interests, 27 Fla. St. U. L. Rev. 787 (2000) (observing that athlete agents must take care to read all statutes and rules that govern their conduct).


110. See id.


112. UAA, supra note 4, § 2(12).
almost any individual in the world is a student-athlete under the UAA. Some examples of athletes meeting the UAA’s definition of “student-athlete” include high school athletes, junior high or middle school athletes and elementary school athletes.113 Other states contain similar provisions, sometimes specifically referencing high school or elementary school athletes.114 For example, California specifically includes elementary children when defining the term “student-athlete.”115 As amazing as it sounds, the UAA’s language (as well as that of California) perhaps finds an appropriate place in the athlete agent statutes, since colleges and sporting goods manufacturers currently scout student-athletes while they attend elementary school.116

To make matters even worse, some states explicitly or implicitly authorize the very same conduct that the NCAA specifically prohibits. Louisiana provides the perfect example. As previously noted, the NCAA specifically prohibits all agent gifts to student-athletes.117 The dollar value of the gift means nothing to the NCAA so that even a free car ride would violate NCAA rules.118 Nevertheless, the Louisiana athlete agent statute allows athlete agents to make several types of gifts to student-athletes including gifts of $500 or less.119 In fact, the Louisiana statute permits agents to provide student-athletes with gifts of $500 or less, even if the student-athlete loses eligibility and the NCAA sanctions the university.120 Amazingly, Louisiana is not the only state to allow agent gifts to athletes.121

In fact, even the UAA implicitly allows gifts to athletes. The NCCUSL, like several states, fell victim to using language that allows agents to make gifts to athletes. Implicitly under the UAA, agents can make gifts to student-athletes as long as: (1) the gift is not made

113. See id. § 2.
114. See generally Remis & Sudia, supra note 78 (outlining several state statutes to note variations between and inconsistencies among them).
115. See, e.g., CAL. BUS. & PROF. CODE § 18895.2(i)(1) (West 1999).
116. See, e.g., Remis & Sudia, supra note 78, at 27 n.82 (discussing scouting of Tyson Chandler by Nike beginning at age of thirteen).
117. See NCAA MANUAL, supra note 15, §§ 12.3.1.2, 12.1.1.
118. See id. § 12.3.1.2 (“An individual shall be ineligible if he . . . accepts transportation or other benefits from any person who wishes to represent the individual in the marketing of his . . . athletics ability.”).
119. See LA. REV. STAT. ANN. § 4:433 (West 2001) (stating that gift over five hundred dollars to athlete or member of athlete’s family is unlawful under certain conditions).
120. See id.
121. For an in-depth analysis of what gifts are explicitly or implicitly authorized in the twenty-eight athlete agent statutes, see Sudia & Remis, supra note 33 (analyzing regulations that govern gifts to athletes). For a detailed listing of those gift-authorizing provisions, see id. apps. A & B at 302-16.
"with the intent to induce a student-athlete to enter into an agency contract," and (2) the gift comes "after" the agent gets the student-athlete to sign an agent contract (yet another NCAA violation).\textsuperscript{122} This implicit authorization of gifts presents a few problems. First, proving an athlete agent’s subjective “intent” at the time of a gift to an athlete should prove problematic and difficult. How does the state prove subjective intent if the gift arrives at Christmas during the student-athlete’s freshman year with no strings attached, and the agent merely offered it as a Christmas gift and did not try to get a post-dated contract signed? Other scenarios in which athlete agents could provide gifts to athletes and avoid liability under the UAA are not difficult to imagine (e.g., giving one student-athlete a gift solely to induce the student to introduce and “put in a good word” for the agent with respect to his roommate – the real athletic star the agent wants to sign and represent).\textsuperscript{123} It would have been preferable if the NCCUSL would have prohibited all agent gifts to athletes, as the NCAA prohibits all gifts to athletes (not just some gifts). For example, the California statute simply provides: “no athlete agent or athlete agent’s representative or employee shall, directly or indirectly, offer or provide money or any other thing of benefit or value to a student-athlete.”\textsuperscript{124} Such language serves the state more wisely and efficiently in prohibiting gifts and punishing agents for causing violations of NCAA rules, which is the real reason that states enact athlete agent statutes in the first place.\textsuperscript{125}

IV. Conclusion

As one can easily see, voluminous exemptions and loopholes arise in all twenty-eight athlete agent statutes and the UAA. The UAA provides some welcomed relief in that, as a uniform law, it is intended for adoption in all states so that consistent obligations and results can be achieved in any state in which an athlete agent conducts business. Further, its provisions, with the few exceptions noted above, serve the states well by being relatively straightforward and uncluttered. However, to accept the UAA as a good thing for states to adopt, one must first believe that athlete agents should be regulated in the first place. Unfortunately, as discussed in the fol-

\textsuperscript{122} See UAA, supra note 4, § 14(a). As for the NCAA prohibition against athletes signing agent contracts, see NCAA MANUAL, supra note 15, §§ 12.3.1-12.3.2.1.

\textsuperscript{123} For a more detailed analysis of this issue, see Sudia & Remis, supra note 33.

\textsuperscript{124} See CAL. BUS. & PROF. CODE § 18897.6 (West 1999).

\textsuperscript{125} See supra notes 4-19 and accompanying text.
lowing paragraphs, convincing someone that athlete agents should be regulated can be an uphill battle.

First, the mere fact that a state can tell one person that he or she may not contact or speak to another person seems to fly directly in the face of our time-honored First Amendment freedoms. Equally disturbing are the statutory prohibitions against the providing of sound legal and financial advice to student-athletes who are not experienced with finances, future drafts or negotiations of professional sports and endorsement contracts with large companies having vastly superior negotiation skills. Equally appalling are claims that NCAA sports preserve the integrity of athleticism for its educational and spiritual sake when coaches and schools earn obscene amounts of money off of the student-athletes' talents, while the student-athletes themselves earn nothing (especially when some athletes lack basic amenities of life). Claiming that the NCAA promotes true competition for the mere love of the sport when the NCAA has allowed the system to become so one-sided that relatively few schools dominate recruiting classes and championships every year seems transparent and meaningless.

Nevertheless, the states arguably have no choice other than to regulate athlete agents because the NCAA still prohibits athletes from signing contracts with agents or accepting gifts from agents. The NCAA sanctions universities for playing an ineligible athlete and the result could mean loss or forfeiture of a multi-million dollar bowl payout and millions of dollars from television contracts. Thus, one can easily understand the states' need to protect their interests by enacting athlete agent legislation.

However, having just admitted to the justification for state athlete agent legislation, one last hypothetical will be set forth to show athlete agents exactly what type of absurd results they could face in this exciting business. Assume for a moment that three state legislatures enact athlete agent legislation: Louisiana, Ohio and Oklahoma.126 Also assume that Ohio eventually adopts the UAA's definition of "student-athlete" (Ohio has not yet done this, but assume that it does for purposes of this hypothetical).127 Further assume that an athlete agent resides in Louisiana and receives a call from her neighbor saying she will arrive home late from work, and

126. In fact, these three states did enact athlete agent statutes. See supra note 1 and accompanying text.

127. It is not unreasonable to assume that some states will adopt all of the UAA's provisions or that some states will adopt various provisions of the UAA in a piecemeal fashion (but not the entire statute).
she needs her to pick up her one boy from Little League practice and another boy from his last high school baseball game as a senior. The agent, kind-hearted as usual, assures her that it is not a problem because she was going by the playing fields anyway to pick up a new baby crib for her other neighbor’s baby shower. The agent watches the Little League child play his heart out, gives him a “high five” and tells him what a great game he played. The agent takes both children out to buy them ice cream cones on the way home to celebrate their wins.

Incredibly enough, the agent theoretically has violated the laws of several states (more states than the three states mentioned above). In reality, the Louisiana high school senior is an Oklahoma NCAA athlete — even though he has never traveled outside Louisiana! This is true because an “Oklahoma NCAA athlete” is defined as “any athlete who is eligible to participate in intercollegiate sports contests as a member of a sports team at an institution of higher education that is located in this state and that is a member of the National Collegiate Athletic Association.”128 Oklahoma does not require a person to be an Oklahoma resident or to be attending school in Oklahoma; thus, theoretically, most high school children across America are Oklahoma NCAA athletes as long as they are “athlete[s] who [are] eligible to participate in intercollegiate sports contests as a member of a sports team at an institution of higher education that is located in Oklahoma.”129 In fact, depending on how the statute is interpreted, even the child in Little League could be an Oklahoma NCAA athlete.130 As a result, the Louisiana agent should ensure that she reads the Oklahoma statute to make certain she is not violating any laws when talking to, giving a ride to and buying ice cream cones for these potential Oklahoma NCAA athletes. Luckily, even though the agent resides and conducts business in Louisiana, Louisiana allows gifts to athletes under various circumstances.131 If the agent asks the children if she can represent them some day when they reach the professional leagues, and the children smile and say “yes,” they have just agreed to be represented by an agent and could face losing NCAA eligibility (it does

129. Id.
130. This depends on whether Oklahoma’s requirement of being “eligible” means “currently eligible” or “not ineligible.” For a more detailed analysis of this Oklahoma issue, see Remis & Sudia, supra note 78, at 28-29 (noting that distinction is very important because latter definition allows for many more people under statute).
131. Even if the ice cream cones cost five hundred dollars, the agent would be safe in Louisiana. See supra notes 119-21 and accompanying text.
not matter that the athlete is not in college at the time, nor that the agreement is oral, nor that the agreement concerns representation in the future after eligibility expires.132 In fact, because the agent and athlete did not limit the agreement to Major League Baseball but instead said the "professional leagues," the children face losing eligibility for all sports (since the agreement was not limited to one particular sport).133 Moreover, even though the agent does not reside in Ohio, and the oral contract was executed outside Ohio, the Ohio athlete agent statute potentially could attempt to assert jurisdiction over the agent even though no minimum contacts exist as required under the Due Process Clause.134

There is yet another "catch" to this scenario. Because we are assuming Ohio adopted the UAA's definition of student-athlete (as noted above, Ohio has not in reality done this, but it is likely that some states eventually will), the agent has another problem: the newborn infant for whom she was purchasing a crib. The agent just provided a gift to a potential student-athlete, as the newborn definitely qualifies as a person who "may be eligible in the future,"135 and perhaps someone who is currently eligible.136

In sum, no easy answer has been uncovered to solve the problem of unethical or unscrupulous athlete agent conduct and the devastating financial circumstances it can thrust upon a state's athletes and educational institutions. In the meantime, athlete agents should read the athlete agent legislation existing in every state in which they conduct business.

133. See id. § 12.3.1 (stating that contracts not limited to certain sports will be deemed applicable to all sports).
134. See supra notes 98-106 and accompanying text. Of course, the other Ohio statutory provisions should be checked to see if the agent actually violated the Ohio statute, as this is just the jurisdictional provision.
135. See UAA, supra note 4, § 2.
136. As previously noted with Oklahoma, this depends on whether the requirement of being "eligible" means "currently eligible" or "not ineligible." For a more detailed analysis of this issue, see Remis & Sudia, supra note 78, at 29-30; see also supra notes 129-31 and accompanying text.
# APPENDIX "A"

**STATUTORY DEFINITIONS**

AsExpressly Enumerated in Athlete Agents Statutes

| STATUTORY CATEGORIES                     | A | A | A | C | C | C | F | G | I | K | K | L | M | M | M | M | N | N | O | O | O | O | P | S | T | T | U | U | U | U | A | A |
| DEFINITIONS INCLUDED IN UAA:            |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| Agency Contract (or Agent Contract)     | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| Athlete Agent (or Sports Agent)         | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| Athletic Director                        | X |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| Contact                                  |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| Endorsement Contract                     | X |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| Intercollegiate Sport                    |   | X |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| Person                                   | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| Professional Sports Services Contract    | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| Record                                   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| Registration                             |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| State (or Secretary/Department/Commission)| X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| Student-athlete                           | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| DEFINITIONS IN STATUTES BUT NOT IN UAA:  |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| Athlete                                  | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| Athletic Department                      | X |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| Contractual Relationship                 |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| Conviction                               |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| Educational Institution                  | X |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| Eligibility                              |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| Employment as a Professional Athlete     | X |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| Federation or Association                |   | X |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| Financial Services                       | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| Financial Services Contract              | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| Governing Board                          | X |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| STATUTORY CATEGORIES                        | A | P | C | C | F | G | I | I | K | K | L | M | M | M | M | N | N | O | O | P | S | T | T | U |
| Immediate Family                           | X |   |   |   | X |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| Institution                                |   |   |   |   | X |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| Institution of Higher Education            | X | X | X | X | X | X | X | X | X |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| License                                    |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| Local Athlete                              |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| National Collegiate Athletic Association   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| NCAA Athlete                               | X |   |   |   | X |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| Non-NCAA Athlete                           |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| Negotiate                                  |   |   |   |   | X |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| Participation                              | X | X |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| Players Association or Organizations       | X | X |   |   | X | X |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| Registered Athlete Agent                   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| Rescindability Period                      |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| Schedule of Fees                           |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   | X |
| State University or College                |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |

X = Specifically enumerated provision located within the athlete agent statute. UAA = UNIFORM ATHLETE AGENTS ACT
### APPENDIX “B”

**PRIMARY AREAS OF STATUTORY REGULATION**

As Expressly Enumerated in Athlete Agents Statutes

| STATUTORY CIVIL AND CRIMINAL PENALTIES | A | A | A | A | C | C | C | F | G | I | I | K | K | L | M | M | M | M | M | M | N | N | N | N | O | O | O | P | S | T | T | U |
| REMEDIES AND PENALTIES:                |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| Civil Legal Relief                    | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| Civil Equitable Relief                | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| Civil/Administrative Fines            | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| Criminal Penalties (Felony and/or     | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| Misdemeanor)                          |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| Athlete Subject to Civil and/or       | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| Criminal Penalty                      |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| REGISTRATION/REPORTING/NOTICES:       |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| Registration Process Exists           | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| Record Keeping/Reporting Requirements | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| Requirements Exist                    |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| Filing/Notice Requirements - To State/Institution |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| Pre-Contractual Notice                | X |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| Post-Contractual Notice               | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| Notice Requirements - To Athlete      | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| AGENT CONTRACTS WITH ATHLETES:        |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| Timing Requirements for Contract      |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| Execution                             | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| AGENT GIFTS TO ATHLETES:              |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
| Specific Prohibitions on Certain Agent Gifts | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| Certain Gifts Authorized (Explicitly or Implicitly) | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |