

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 229

H.P. 188

House of Representatives, January 23, 2003

An Act to Enact the Uniform Athlete Agents Act

Reference to the Committee on Business, Research and Economic Development suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative NORBERT of Portland.
Cosponsored by Senator CATHCART of Penobscot and
Representatives: CUMMINGS of Portland, DUNLAP of Old Town, LEDWIN of Holden,
SHERMAN of Hodgdon, SIMPSON of Auburn, THOMAS of Orono, Senators: MARTIN of
Aroostook, WOODCOCK of Franklin.

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Be it enacted by the People of the State of Maine as follows:

Sec. 1. 32 MRSA c. 4 is enacted to read:

CHAPTER 4

UNIFORM ATHLETE AGENTS ACT

§231. Short title

This chapter may be known and cited as "the Uniform Athlete Agents Act."

Comment

The title Uniform Athlete Agents Act was selected because a majority of the existing acts regulating the activities of agents representing athletes have similar titles.

§232. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

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

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

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

4. Commissioner. "Commissioner" means the Commissioner of Professional and Financial Regulation.

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

2 section 235]. Corporations and other business entities do not
3 come within the definition of "athlete agent" and therefore are
4 not required to register under the act, even though individuals
5 employed by the corporation or other business entity as athlete
6 agents would be required to register. The definition also
7 includes other individuals or "runners" used by an agent to
8 recruit or solicit a student athlete to enter into an agency
9 contract. Attorneys are not excluded from the definition. An
10 attorney does not need to comply with the provisions of this act
11 in order to provide legal services to a student athlete, but is
12 required to register to perform the services of an athlete agent.

13
14 Representatives of "professional sports teams or professional
15 sports organizations," such as baseball teams, are excluded from
16 the definition of "athlete agent" as long as they are acting for
17 their teams or organizations. If a representative should attempt
18 to induce a student athlete to enter into an agency contract,
19 rather than a contract with the team or organization,
20 registration is required. Also excluded from the definition are
21 individuals who simply provide information to a student athlete,
22 but who do not recruit or solicit the student athlete to sign an
23 agency contract. For example, a professional athlete who gives a
24 student athlete information about the qualifications of an
25 athlete agent is not required to register unless the professional
26 athlete also attempts to recruit or solicit the student athlete
27 to sign an agency contract. In the exclusion of certain family
28 members from the definition of "athlete agent," the phrase "or
29 guardian" is bracketed because some States may use another term
30 to describe an individual who has legal responsibility for the
31 care of another.

32 The definition of "contact" does not include communications which
33 merely provide information to the student athlete. For example, a
34 communication about the position a student athlete could
35 reasonably expect to have in a professional draft does not
36 constitute recruitment or solicitation to enter into an agency
37 contract.

38 The definition of "student athlete" applies to a two-sport
39 athlete who has eligibility remaining in one sport. For example,
40 an individual who has signed a contract to play professional
41 basketball is not a student athlete in basketball, but is a
42 student athlete in baseball. The definition of "student athlete"
43 also includes individuals who are not yet in college. It includes
44 high school students, high school dropouts and high school
45 graduates who have delayed matriculation to a college or
46 university so long as the individual may have future eligibility
47 for intercollegiate sports.

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3 **§233. Service of process; subpoenas**

4 **1. Service of process agent.** By acting as an athlete agent
5 in this State, a nonresident individual appoints the commissioner
6 as the individual's agent for service of process in any civil
7 action in this State related to the individual's acting as an
8 athlete agent in this State.

9 **2. Subpoenas.** The commissioner may issue subpoenas for any
10 material that is relevant to the administration of this chapter.

11
12 **Comment**

13
14 The office of Secretary of State has been designated as the
15 administrator of existing acts regulating the activities of
16 athlete agents more frequently than any other office. The office
17 of Secretary of State is referred to in subsection (b) [Maine
18 cite subsection 2] and throughout this act. It is recognized,
19 however, that the appropriate state office to administer this act
20 may vary from State to State and, therefore, references to the
21 Secretary of State are in brackets.

22
23 Subsection (b) [Maine cite subsection 2] is in brackets because
24 it may not be required under the administrative procedure acts of
25 some States. If subsection (b) [Maine cite subsection 2] is not
26 used, the remainder of the section should not be designated as
27 (a) [Maine cite subsection 1].

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30 **Maine Comment**

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32 The Commissioner of Professional and Financial Regulation is
33 designated as the administrator of this chapter.

34
35 **§234. Athlete agents; registration required; void contracts**

36
37 **1. Registration required.** Except as otherwise provided in
38 subsection 2, an individual may not act as an athlete agent in
39 this State without holding a certificate of registration under
40 section 236 or 238.

41
42 **2. Exception.** Before being issued a certificate of
43 registration, an individual may act as an athlete agent in this
44 State for all purposes except signing an agency contract if:

45
46 **A.** A student athlete or another person acting on behalf of
47 the student athlete initiates communication with the
48 individual; and
49

- 2 A. The name of the applicant and the address of the
3 applicant's principal place of business;
- 4 B. The name of the applicant's business or employer, if
5 applicable;
- 6 C. Any business or occupation engaged in by the applicant
7 for the 5 years next preceding the date of submission of the
8 application;
- 9 D. A description of the applicant's:
- 10 (1) Formal training as an athlete agent;
- 11 (2) Practical experience as an athlete agent; and
- 12 (3) Educational background relating to the applicant's
13 activities as an athlete agent;
- 14 E. The names and addresses of 3 individuals not related to
15 the applicant who are willing to serve as references;
- 16 F. The name, sport and last-known team for each individual
17 for whom the applicant acted as an athlete agent during the
18 5 years next preceding the date of submission of the
19 application;
- 20 G. The names and addresses of all persons who are:
- 21 (1) With respect to the athlete agent's business if it
22 is not a corporation, the partners, members, officers,
23 managers, associates or profit sharers of the business;
24 and
- 25 (2) With respect to a corporation employing the
26 athlete agent, the officers, directors and any
27 shareholder of the corporation having an interest of 5%
28 or greater;
- 29 H. Whether the applicant or any person named pursuant to
30 paragraph G has been convicted of a crime that, if committed
31 in this State, would be a crime involving moral turpitude or
32 a felony and must identify the crime;
- 33 I. Whether there has been any administrative or judicial
34 determination that the applicant or any person named
35 pursuant to paragraph G has made a false, misleading,
36 deceptive or fraudulent representation;
- 37 J. Any instance in which the conduct of the applicant or
38 any person named pursuant to paragraph G resulted in the

2 imposition of a sanction, suspension or declaration of
3 ineligibility to participate in an interscholastic or
4 intercollegiate athletic event on a student athlete or
5 educational institution;

6 K. Any sanction, suspension or disciplinary action taken
7 against the applicant or any person named pursuant to
8 paragraph G arising out of occupational or professional
9 conduct; and

10 L. Whether there has been any denial of an application for,
11 suspension or revocation of, or refusal to renew, the
12 registration or licensure of the applicant or any person
13 named pursuant to paragraph G as an athlete agent in any
14 state.

15 **2. Certificate from another state.** An individual who has
16 submitted an application for, and holds a certificate of,
17 registration or licensure as an athlete agent in another state
18 may submit a copy of the application and certificate in lieu of
19 submitting an application in the form prescribed pursuant to
20 subsection 1. The commissioner shall accept the application and
21 the certificate from the other state as an application for
22 registration in this State if the application to the other state:

23 A. Was submitted in the other state within the 6 months
24 next preceding the submission of the application in this
25 State and the applicant certifies that the information
26 contained in the application is current;

27 B. Contains information substantially similar to or more
28 comprehensive than that required in an application submitted
29 in this State; and

30 C. Was signed by the applicant under penalty of perjury.

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38 **Comment**

39 Most of the requirements for disclosure in an application for
40 registration found in subsection (a) [Maine cite subsection 1]
41 are similar to requirements imposed by existing acts. Subsection
42 (a)(6) [Maine cite subsection 1, paragraph F] is not intended to
43 cause an athlete agent who is also an attorney to violate the
44 attorney-client privilege. If an attorney's role is limited to
45 providing legal services to a student athlete, the attorney is
46 not required to register as an athlete agent or comply with this
47 act. An attorney's actions as an athlete agent, however, are
48 outside the scope of legal services, there is no privilege and
49 the attorney must comply with this act.
50

2 It is the intent of this section to require that records
concerning registration of athletes be open to the public. The
4 provision in subsection (a) [Maine cite subsection 1] about an
application being a public record is bracketed because it is not
6 necessary in States which have other applicable law causing the
records to be open to the public.

8
Subsection (b) [Maine cite subsection 2] provides for reciprocal
10 use of applications in States which have adopted the Uniform Act.
The need for an agent to comply with substantially different
12 application procedures in multiple jurisdictions is eliminated.
It is the first of a number of reciprocity provisions found in
14 the act which are intended to ease the burden placed on agents by
substantially different registration requirements and to simplify
16 enforcement of the act. Absence of reciprocity provisions in
existing acts is a primary reason why the Uniform Act is needed.

18
20 **§236. Certificate of registration; issuance or denial; renewal**

22 1. Issuance of certificate. Except as otherwise provided
24 in subsection 2, the commissioner shall issue a certificate of
registration to an individual who complies with section 235,
26 subsection 1 or whose application has been accepted under section
235, subsection 2.

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

34
36 A. Been convicted of a crime that, if committed in this
State, would be a crime involving moral turpitude or a
38 felony;

40 B. Made a materially false, misleading, deceptive or
fraudulent representation in the application or as an
42 athlete agent;

44 C. Engaged in conduct that would disqualify the applicant
from serving in a fiduciary capacity;

46 D. Engaged in conduct prohibited by section 244;

48 E. Had a registration or licensure as an athlete agent
50 suspended, revoked or denied or been refused renewal of
registration or licensure as an athlete agent in any state;

2 F. Engaged in conduct the consequence of which was that a
3 sanction, suspension or declaration of ineligibility to
4 participate in an interscholastic or intercollegiate
5 athletic event was imposed on a student athlete or
6 educational institution; or

7 G. Engaged in conduct that significantly adversely reflects
8 on the applicant's credibility, honesty or integrity.

9
10 3. Considerations. In making a determination under
11 subsection 2, the commissioner shall consider:

12 A. How recently the conduct occurred;

13 B. The nature of the conduct and the context in which it
14 occurred; and

15 C. Any other relevant conduct of the applicant.

16
17 4. Application for renewal. An athlete agent may apply to
18 renew a registration by submitting an application for renewal in
19 a form prescribed by the commissioner. An application filed
20 under this section is a public record. The application for
21 renewal must be signed by the applicant under penalty of perjury
22 and must contain current information on all matters required in
23 an original registration.

24
25 5. Certificate from another state for renewal. An
26 individual who has submitted an application for renewal of
27 registration or licensure in another state, in lieu of submitting
28 an application for renewal in the form prescribed pursuant to
29 subsection 4, may file a copy of the application for renewal and
30 a valid certificate of registration or licensure from the other
31 state. The commissioner shall accept the application for renewal
32 from the other state as an application for renewal in this State
33 if the application to the other state:

34 A. Was submitted in the other state within the 6 months
35 next preceding the filing in this State and the applicant
36 certifies the information contained in the application for
37 renewal is current;

38 B. Contains information substantially similar to or more
39 comprehensive than that required in an application for
40 renewal submitted in this State; and

41 C. Was signed by the applicant under penalty of perjury.

2 The commissioner may issue a temporary certificate of
3 registration while an application for registration or renewal of
4 registration is pending.

6 **Comment**

8 The discretion to issue a temporary certificate of registration
9 is broad enough to include issuance of such a certificate even
10 where the registration may be contested. It is not necessary to
11 issue a temporary certificate to protect an individual with whom
12 a student athlete initiated communications. Under Section 4(b)
13 [Maine cite section 234, subsection 2], that individual is only
14 required to file an application for registration within seven
15 days after commencement of efforts to recruit or solicit the
16 student athlete to sign an agency contract.

18 **§239. Registration and renewal fees**

20 An application for registration or renewal of registration
21 must be accompanied by a fee of:

24 1. Initial application. [\$] for an initial application for
25 registration;

26 2. Application based on certificate from another state.
27 [\$] for an application for registration based upon a certificate
28 of registration or licensure issued by another state;

30 3. Renewal. [\$] for an application for renewal of
31 registration; or

34 4. Renewal based on certificate from another state. [\$]
35 for an application for renewal of registration based upon an
36 application for renewal of registration or licensure submitted in
37 another state.

40 **Comment**

42 The amount of fees is left for each State to determine. Some
43 States with existing acts have set fees in amounts sufficient to
44 recover the cost of administration. If that approach is taken, a
45 fee for registration or renewal based on registration or renewal
46 of registration in another State should be less than when a
47 complete evaluation and review of an application is necessary.

48 Athlete agent registration is the cornerstone of this act. High
49 registration fees imposed by some States with existing acts have
50

probably contributed to seemingly small numbers of registrants under existing acts. The success of this act may be contingent on the implementation of a reasonable fee structure which does not motivate non-compliance.

§240. Required form of contract

1. Form of contract. An agency contract must be in a record, signed or otherwise authenticated by the parties.

2. Contents. An agency contract must state or contain:

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

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

C. A description of any expenses that the student athlete agrees to reimburse;

D. A description of the services to be provided to the student athlete;

E. The duration of the contract; and

F. The date of execution.

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

WARNING TO STUDENT ATHLETE

IF YOU SIGN THIS CONTRACT:

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

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

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

2 4. Contract not in compliance voidable. An agency contract
4 that does not conform to this section is voidable by the student
6 athlete. If a student athlete voids an agency contract, the
8 student athlete is not required to pay any consideration under
10 the contract or to return any consideration received from the
12 athlete agent to induce the student athlete to enter into the
14 contract.

16 5. Record of contract to student athlete. The athlete
18 agent shall give a record of the signed or otherwise
20 authenticated agency contract to the student athlete at the time
22 of execution.

24 **Comment**

26 This section is intended to provide protection to the student
28 athlete by requiring a form of agency contract similar to those
30 required in some consumer transactions. The Drafting Committee
32 preferred to require that agency contracts be in traditional
34 written form. However, the adoption of the Electronic Signatures
36 in Global and National Commerce Act (see Section 19 [Maine cite
38 section 249]) eliminated that option.

40 A student athlete who opts to void an agency contract under this
42 section because it does not comply with the specified form is not
44 required to return any consideration received to induce the
46 signing of the agency contract because such inducement is
48 prohibited conduct under Section 14 [Maine cite section 244].

50 The compensation referred to in subsection (b)(2) [Maine cite
subsection 2, paragraph B] is compensation for services intended
to induce the student athlete to sign an agency contract. It does
not include compensation individuals may receive because an
athlete agent has been successful in securing an agency contract.
For example, the compensation paid employees of an athlete agent
who did not participate in inducing the student athlete to sign
an agency contract is not compensation under subsection (b)(2)
[Maine cite subsection 2, paragraph B] even though their
compensation may be made possible by the income resulting from
the agency contract.

Subsection (b) [Maine cite subsection 2] contains references to a
student athlete in a time context in which the individual may be
a former student athlete. This is done for simplicity in
drafting. It should be noted that violation of eligibility rules
adopted by an educational institution or a national association
is not automatic and does not occur until a determination has
been made by the educational institution or the national
association.

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§241. Notice to educational institution

1. Notice required by athlete agent. Within 72 hours after entering into an agency contract or before the next scheduled athletic event in which the student athlete may participate, whichever occurs first, the athlete agent shall give notice in a record of the existence of the contract to the athletic director of the educational institution at which the student athlete is enrolled or the athlete agent has reasonable grounds to believe the student athlete intends to enroll.

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

Comment

The purpose of this section is to prevent an educational institution from being sanctioned or penalized by allowing an ineligible player to participate in intercollegiate sports. The penalties may be severe. In addition to non-monetary penalties mentioned in the prefatory note, penalties may include loss of very substantial revenues received for participation in a football bowl game or a post-season basketball tournament.

§242. Student athlete's right to cancel

1. Cancellation period. A student athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within 14 days after the contract is signed.

2. Right not waivable. A student athlete may not waive the right to cancel an agency contract.

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

Comment

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3 Because of the disparity in the sophistication of the parties,
4 this section gives the student athlete or former student athlete
5 the right to cancel an agency contract within 14 days even if the
6 athlete agent has complied with the provisions of Section 10
7 [Maine cite section 240] regarding the form of the contract. The
8 section provides relief to the student athlete who has entered
9 into an ill-considered agency contract, but does not provide any
10 assurance that the student athlete will be eligible to compete in
11 a sport.

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14 **§243. Required records**

15 **1. Required records.** An athlete agent shall retain the
16 following records for a period of 5 years:

17
18 **A. The name and address of each individual represented by**
19 **the athlete agent;**

20
21 **B. Any agency contract entered into by the athlete agent;**
22 **and**

23
24 **C. Any direct costs incurred by the athlete agent in the**
25 **recruitment or solicitation of a student athlete to enter**
26 **into an agency contract.**

27
28 **2. Open to inspection.** Records required by subsection 1 to
29 be retained are open to inspection by the commissioner during
30 normal business hours.

31
32 **§244. Prohibited conduct**

33
34 **1. Prohibited conduct to induce entering into contract.** An
35 athlete agent, with the intent to induce a student athlete to
36 enter into an agency contract, may not:

37
38 **A. Give any materially false or misleading information or**
39 **make a materially false promise or representation;**

40
41 **B. Furnish anything of value to a student athlete before**
42 **the student athlete enters into the agency contract; or**

43
44 **C. Furnish anything of value to any individual other than**
45 **the student athlete or another registered athlete agent.**

46
47 **2. Prohibited conduct by athlete-agent.** An athlete agent
48 may not intentionally:

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Comment

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4 The extent of the criminal penalties which may be imposed for
6 violation of the act are left to the States adopting the act
8 because of a wide variation in the criminal penalties provided
10 for by existing acts. Variations in the criminal penalties which
12 may be imposed would not detract from the otherwise uniform and
14 reciprocal provisions of the act. Some potential criminal penalty
16 is necessary to discourage those individuals who are willing to
18 engage in improper or illegal conduct because of the size of the
20 monetary stakes in the contemporary professional sports world.

14 **§246. Civil remedies**

16 **1. Action by educational institution.** An educational
18 institution has a right of action against an athlete agent or a
20 former student athlete for damages caused by a violation of this
chapter. In an action under this section, the court may award to
the prevailing party costs and reasonable attorney's fees.

22 **2. Damages.** Damages of an educational institution under
24 subsection 1 include losses and expenses incurred because, as a
26 result of the conduct of an athlete agent or former student
28 athlete, the educational institution was injured by a violation
of this chapter or was penalized, disqualified or suspended from
30 participation in athletics by a national association for the
promotion and regulation of athletics, by an athletic conference
or by reasonable self-imposed disciplinary action taken to
mitigate sanctions likely to be imposed by such an organization.

32 **3. Accrual.** A right of action under this section does not
34 accrue until the educational institution discovers or by the
exercise of reasonable diligence would have discovered the
36 violation by the athlete agent or former student athlete.

38 **4. Liability.** Any liability of the athlete agent or the
former student athlete under this section is several and not
40 joint.

42 **5. Other remedies.** This chapter does not restrict rights,
remedies or defenses of any person under law or equity.

44
46 Comment

48 It is assumed that educational institutions will be very
reluctant to bring an action against a former student athlete.
Public opinion and the desire to be successful in future

2 recruiting of athletes should cause educational institutions to
3 carefully consider whether to exercise the right established by
4 subsection (a) [Maine cite subsection 1] in most situations.
5 There are, however, known instances of extremely egregious
6 conduct by student athletes who received lucrative professional
7 contracts which caused serious damage to educational
8 institutions. Subsection (a) [Maine cite subsection 1] keeps open
9 the possibility of a civil action against those individuals.

10 Section 16 [Maine cite section 246] does not specifically
11 authorize an action by a student athlete against an athlete agent
12 because the student athlete can bring an action against an
13 athlete agent under existing law. Subsection (e) [Maine cite
14 subsection 5] preserves the rights of the student athlete under
15 existing law.

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18 **§247. Administrative penalty**

19 The commissioner may assess a fine against an athlete agent
20 not to exceed \$25,000 for a violation of this chapter.

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23
24 **Comment**

25 The procedure for imposing an administrative penalty and
26 complying with due process requirements are left to the adopting
27 State's administrative procedures law.

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30 **§248. Uniformity of application and construction**

31 In applying and construing this uniform Act, consideration
32 must be given to the need to promote uniformity of the law with
33 respect to its subject matter among states that enact it.

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38 **§249. Federal Electronic Signatures in Global and National**
39 **Commerce Act**

40 The provisions of this chapter governing the legal effect,
41 validity or enforceability of electronic records or signatures,
42 and of contracts formed or performed with the use of such records
43 or signatures conform to the requirements of the federal
44 Electronic Signatures in Global and National Commerce Act, Public
45 Law 106-229, Section 102, 114 Stat. 464 (2000) and supersede,
46 modify and limit the federal Electronic Signatures in Global and
47 National Commerce Act.

Comment

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The Electronic Signatures in Global and National Commerce Act (ESGNCA) contains provisions governing the legal effect, validity, or enforceability of electronic records and electronic signatures. The act recognizes contracts which have been formed with the use of electronic records or electronic signatures even though the Drafting Committee recommends that agency contracts be in the traditional written form.

10

12 **§250. Effective date**

14 This chapter takes effect January 1, 2004.

16

SUMMARY

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This bill enacts the Uniform Athlete Agents Act. The comments of the National Conference of Commissioners on Uniform State Laws are included.

22

This bill designates the Commissioner of Professional and Financial Regulation as the administrator of the law.

24