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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2005-06

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Job Creation, Economic Development and Consumer Affairs (SC-JCEDCA)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
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INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Mike Barman (LRB) (August/2012)

Senate

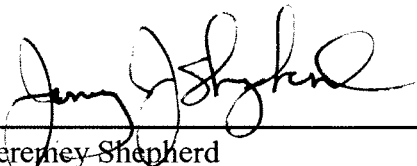
Record of Committee Proceedings

**Committee on Job Creation, Economic Development and
Consumer Affairs**

Clearinghouse Rule 04-110

Relating to the licensure and regulation of athlete agents.
Department of Regulation and Licensing

January 27, 2005	Referred to Committee on Job Creation, Economic Development and Consumer Affairs.
February 23, 2005	Letter of extension sent to Department of Regulation and Licensing
March 18, 2005	Modifications requested.
April 8, 2005	No action taken.



Jeremy Shepherd
Committee Clerk

Jim Doyle
Governor

WISCONSIN DEPARTMENT OF
REGULATION & LICENSING



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March 1, 2005

Senator Ted Kanavas
Room 10 South
State Capitol
P.O. Box 8935
Madison, WI 53708-8935

Re: Clearinghouse Rule 04-110- Senate Committee on Job Creation, Economic Development and Consumer Affairs

Dear Senator Kanavas,

Thank you for your letter relating to Clearinghouse Rule 04-110, regarding the licensure and regulation of athletic agents. I am also in receipt of your email requesting a 30 day extension of the Department's implementation of the rule pursuant to Wis. Stats. § 227.19 (4) (b) 1. a.

The extension request was based upon comments from Steve Waterfield, University of Wisconsin Assistant AD for Compliance. Mr. Waterfield's concerns are underscored and set forth below. I have asked Attorney William Black from the Department of Regulation and Licensing to respond to Mr. Waterfield's concerns. Mr. Black's responses immediately follow Mr. Waterfield's comments.

1. Jamie forwarded your message to me about the legislature's proposed rules for Wisconsin's Athlete Agent statute. Overall, I think the rules appropriately address the main issues involving the implementation of the statute, but I do have some comments.

The definition of athlete agent in RL 150.02-(2) includes an individual who "recruits or solicits a student athlete to enter into an agency contract." Many agents use "runners" as intermediaries. These runners attempt to befriend the student-athlete during the agent selection process. To me, runners fit under the definition of an athlete agent because they are recruiting and soliciting a student-athlete to enter into an agency contract. I do not know if this is the legislature's intent, but it may result in an increase in registrations. I think runners should be included given the role they play for the agent during the student-athlete's courtship, but including them may not be feasible.

RL 150.02 (2) exactly duplicates the statutory definition and includes the concept of "runners".

The rule section provides:

“Athlete agent” means an individual who enters into an agency contract with a student athlete or recruits or solicits a student athlete to enter into an agency contract. “Athlete agent” includes an individual who represents to the public that the individual is an athlete agent. “Athlete agent” 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. “Athlete agent” also does not include an individual who provides information to a student athlete, but who does not recruit or solicit the student athlete to enter into an agency contract.

Mr. Waterfield states that he thinks runners should be included in the definition of athlete agent. The Department concurs. While the word “runner” is not included in the definition, we believe that the rules as currently written do include “runners” within the definition of “athlete agent.”

The way the statute is designed, and mirrored by the rule, rather than use labels for persons, the statute and rule describe *the activities* that generate a requirement for registration. Any person, doing an act that requires registration, must be registered. It is certainly contemplated that a registered athlete agent may hire employees (including “runners”) who, because of their job duties, would also be required to be registered as athlete agents.

The National Conference of Commissioners on Uniform State Laws, (NCCUSL), drafted the model legislation adopted by 2003 Wisconsin Act 150. The NCCUSL draft comment recognizes that runners included within the definition of “athlete agent”, as follows:

Only individuals are within the definition of “athlete agent” and therefore required to register under Section 5. Corporations and other business entities do not come within the definition of “athlete agent” and therefore are not required to register under the act, even though individuals employed by the corporation or other business entity as athlete agents would be required to register. *The definition also includes other individuals or “runners” used by an agent to recruit or solicit a student-athlete to enter into an agency contract.* Attorneys are not excluded from the definition. An attorney does not need to comply with the provisions of this act in order to provide legal services to a student-athlete, but is required to register to perform the services of an athlete agent. [Emphasis added.]

Mr. Waterfield’s next concern is as follows:

2. Pursuant to RL 153.07(3), an athlete agent must provide the department with a record of any "direct costs incurred by the athlete agent in the recruitment or solicitation of a student athlete to enter into an agency contract." If runners are included in the athlete agent definition, then the expenses runners provide will be included. If runners are not included, I recommend specifying that any direct costs incurred by the athlete agent or any person employed or contracted for any consideration paid by the athlete agent to solicit, recommend, or recruit, directly or indirectly, student-athletes on the applicant's behalf must be included. In addition to including costs incurred by runners, I would also require the athlete agent to submit the date these costs were provided. That serves as an additional check to see if the athlete agent provided any impermissible benefits before the student-athlete exhausted or forfeited his eligibility.

Mr. Waterfield proposes that “runners” who do athlete agent activities need their costs to be reported by the employing athlete agent. As previously discussed, individuals who perform as an athlete agent (including runners) must be registered. Therefore runners, as athlete agents would be required to both be registered and maintain a record of costs.

Mr. Waterfield in addition suggests that the rules specify that an agent's costs records include the dates that the costs were expended. This requirement would presumably bolster the prohibition against furnish anything of value to a student athlete *before* the student athlete enters into an agency contract.

The Department agrees that this is a valid point raised by Mr. Waterfield. Although it would be considered implicit that a record of direct costs would include the date that cost was incurred, any potential ambiguity in this regard can be eliminated by a modification to the rule.

Accordingly, the Department will submit a request for a germane modification to the proposed rule pursuant to Wis. Stats. § 227.19 (4) (b) 3., as follows:

RL 153.07 Records. An athlete agent shall retain all of the following records for a period of 5 years. Records are to be open to inspection by the department during normal business hours. Upon demand, an athlete agent shall provide a copy of a record that includes all of the following to the department:

(1) The name and address of each individual represented by the athlete agent.

(2) Any agency contract entered into by the athlete agent.

(3) The amount and date of Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student athlete to enter into an agency contract.

(Note- the request for the germane modification will include an additional matter, not the subject of this correspondence.)

Mr. Waterfield's final concern is as follows:

3. RL 153.09-(2)-(a) provides that an athlete agent shall not intentionally initiate contact with a student-athlete unless registered as an athlete agent. It appears as though it would be permissible for the athlete agent to have contact with the student-athlete's parents, relatives, and friends without being registered. Knowing how some agents work, they may not be registered, but still may be contacting a student-athlete's family and friends.

Admittedly, the authorizing statute could have been more explicit about the issue regarding contacts with student athletes. However, the both the statute and rule define "contact" to include "indirect" contacts, which would mean any contact on behalf of the athlete agent but not directly from the agent.

Both Wis. Stat. § 440.99(4) and Wis. Admin. Code § RL 150.02 (4) provide:

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

Additionally, the "contact" which can be indirect, can also be made by an employee of the athlete agent. RL 153.09(2), provides as follows:

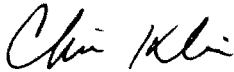
An athlete agent shall not intentionally do any of the following: (a) Initiate contact with a student athlete unless registered as an athlete agent. As used herein, "initiate contact" includes all persons employed or contracted for any consideration paid by the athlete

agent or the athlete agent's business or employer *who either directly or indirectly, solicits, recruits or recommends student athletes on the applicant's behalf. (emphasis added)*

This is the existing framework provided by statute and mirrored by the rule. When read together, a contact, initiated by the agent, can be indirect, through the agent's employee, to the student athlete or through some other means, such as a parent. Each factual situation will be unique regarding how the athlete agent attempts to solicit, and through whom.

Thank you for the opportunity to respond. Please contact me if you require further explanation of any of Attorney Black's responses.

Sincerely,



Chris Klein, Executive Assistant
Department of Regulation and Licensing

cc.

Robin G. Kreibich, Chair
Assembly Committee on Colleges and Universities
Room 107 West
State Capitol
P.O. Box 8952
Madison 53708



Jim Doyle
Governor

WISCONSIN DEPARTMENT OF
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March 4, 2005

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Representative Robin G. Kriebich
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Madison 53708

Re: Germane modification request - Clearinghouse Rule 04-110

Senate Committee on Job Creation, Economic Development and Consumer Affairs
Assembly Committee on Colleges and Universities

Dear Senator Kanavas and Representative Kriebich,

This letter is a request to make a germane modification to Clearinghouse Rule 04-110, a proposed order of the Department relating to the regulation of athlete agents. This request is made under Wis. Stats. § 227.19 (4) (b) 3., in order to make two germane modifications to the proposed rules.

Germane Modification Request- One

The first germane modification request is based upon an inquiry forwarded to the Department by Senator Kanavas. The concern was based upon a comment from Steve Waterfield, University of Wisconsin Assistant AD for Compliance, as follows:

2. Pursuant to RL 153.07(3), an athlete agent must provide the department with a record of any "direct costs incurred by the athlete agent in the recruitment or solicitation of a student athlete to enter into an agency contract." If runners are included in the athlete agent definition, then the expenses runners provide will be included. If runners are not included, I recommend specifying that any direct costs incurred by the athlete agent or any person employed or contracted for any consideration paid by the athlete agent to

solicit, recommend, or recruit, directly or indirectly, student-athletes on the applicant's behalf must be included. In addition to including costs incurred by runners, I would also require the athlete agent to submit the date these costs were provided. That serves as an additional check to see if the athlete agent provided any impermissible benefits before the student-athlete exhausted or forfeited his eligibility.

Mr. Waterfield suggests that the rules specify that an agent's cost records include the dates that the costs were expended. This requirement would presumably bolster the prohibition against furnishing anything of value to a student athlete *before* the student athlete enters into an agency contract.

The Department agrees that this is a valid point raised by Mr. Waterfield. Although it would be considered implicit that a record of direct costs would include the date that cost was incurred, any potential ambiguity in this regard can be eliminated by a modification to the rule.

Accordingly, the Department submits a request for a germane modification to the proposed rule as follows:

RL 153.07 Records. An athlete agent shall retain all of the following records for a period of 5 years. Records are to be open to inspection by the department during normal business hours. Upon demand, an athlete agent shall provide a copy of a record that includes all of the following to the department:

- (1) The name and address of each individual represented by the athlete agent.
- (2) Any agency contract entered into by the athlete agent.
- (3) The amount and date of Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student athlete to enter into an agency contract.

Germane Modification Request- Two

2003 Wisconsin Act 150 requires an agency contract between the athlete agent and the student athlete to contain a notice to the student athlete that 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 and the athlete agent shall inform the athletic director of the educational institution at which the student athlete is enrolled that he or she has entered into an agency contract.

When the permanent rules were drafted, this statutory notice requirement was also placed into the rule, under the Standards of Practice, to be codified at Wis. Admin. Code § RL 153.03 (7). This is appropriate to do so.

However, the athlete agent advisory committee, which advised the Department in drafting the permanent rules, agreed with the Department's initial idea that for extra student protection, a requirement for a second additional notice would be proper, essentially, to require the athlete

agent to give the notice again, in a different form. That idea was incorporated in the proposed permanent rule at Wis. Admin. Code § RL 153.02, as follows:

RL 153.02 Advising Student athlete of duty to provide notice to educational institution. The athlete agent shall provide, in addition to the agency contract, written notice to the student athlete at the time of execution of the agency contract, that, 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 and the athlete agent shall inform the athletic director of the educational institution at which the student athlete is enrolled that he or she has entered in an agency contract.

The proposed permanent rules, which mirror 2003 Wisconsin Act 150, deem as “Prohibited Conduct”, the failure to give the required notice to the student.

RL 153.09 provides as follows:

RL 153.09 Prohibited Conduct.

(2) An athlete agent shall not intentionally do any of the following:

(f) Fail to notify a student athlete before the student athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student athlete ineligible to participate as a student athlete in that sport.

The National Conference of Commissioners on Uniform State Laws, (NCCUSL) which drafted the uniform statute upon which 2003 Wisconsin Act 150 is based, including the above referenced provision, (RL 153.09) related to Prohibited Conduct.

The drafters comments related to the “Prohibited Conduct” section provide as follows:

If a student-athlete signs an agency contract in the form required by Section 10, there is no failure to notify under subsection (b)(6) because the agency contract includes the warning to student-athlete required by Section 10(c).

Therefore, according to the NCCUSL drafting comments, the agency contract warning alone is sufficient notice to the student. Thus RL 153.02 is rendered technically surplusage.

Based on the NCCUSL drafter comments, the Department is concerned that the additional notice requirement of RL 153.02, is therefore not in line with the NCCUSL drafters’ intent and will also result in confusion.

Requiring additional non contractual notice to be given by the athlete agent to the student athlete could result in the confusion of practice, as compared to other states which have implemented the Model Act but do not require additional notice. This is not a preferred result from a uniform law enacted in over 20 states thus far. Aside from being an extra burden to the agent, it also could cause a detrimental litigation issue, if an agent forgets to give the additional notice, and later, a student athlete tries to void a contract. Under the Model Act, as enacted in Wisconsin, it is only contemplated that the failure to give the statutory notice in the contract itself will render the contract void. Therefore, the additional notice required by RL 153.02, does not make a contract void if not given, but does raise uncertainty as to its purpose and effect.

Accordingly, a request is made for the germane modification to delete RL 153.02 from the proposed permanent rules.

These germane modifications are being submitted to your committees for review. Please contact Attorney Bill Black at 608-266-1790 if you require further explanation of the germane modification requests.

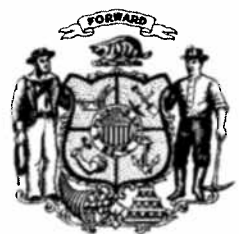
Sincerely,

A handwritten signature in black ink that reads "Chris Klein". The signature is written in a cursive style with a large initial "C" and "K".

Chris Klein, Executive Assistant
Department of Regulation and Licensing



WISCONSIN STATE LEGISLATURE



Jim Doyle
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March 8, 2005

Senator Ted Kanavas
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Representative Robin G. Kriebich
Room 107 West
State Capitol
P.O. Box 8952
Madison 53708

Re: Germane modification (third request) - Clearinghouse Rule 04-110

Senate Committee on Job Creation, Economic Development and Consumer Affairs
Assembly Committee on Colleges and Universities

Dear Senator Kanavas and Representative Kriebich,

This letter is a request to make a germane modification to Clearinghouse Rule 04-110, a proposed order of the Department relating to the regulation of athlete agents. This request is made under Wis. Stats. § 227.19 (4) (b) 3., in order to make a third germane modification to the proposed rules. By previous correspondence, dated March 4, 2005, two previous germane modification requests were forwarded to your committees.

Germane Modification Request- Three

The proposed permanent rules currently contain the following provision:

RL 153.09 Prohibited Conduct.

(2) An athlete agent shall not intentionally do any of the following:

(a) Initiate contact with a student athlete unless registered as an athlete agent. As used herein, "initiate contact" includes all persons employed or contracted for any consideration paid by the athlete agent or the athlete agent's business or employer who either directly or indirectly, solicits, recruits or recommends student athletes on the applicant's behalf.

Following discussion with committee staff and a representative of the University of Wisconsin, the Department requests in the interest of clarity to delete the second sentence of RL 153.09 (2)(a).

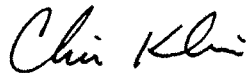
The modified provision would read as follows:

RL 153.09 Prohibited Conduct.

- (2) An athlete agent shall not intentionally do any of the following:
 - (a) Initiate contact with a student athlete unless registered as an athlete agent.

This third germane modification is being submitted to your committees for review. Please contact me if you require further explanation of the germane modification requests.

Sincerely,



Chris Klein, Executive Assistant
Department of Regulation and Licensing



Jim Doyle
Governor

WISCONSIN DEPARTMENT OF
REGULATION & LICENSING



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March 17, 2005

Senator Ted Kanavas
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Representative Robin G. Kriebich
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Madison 53708

Re: Germane modification (third, fourth and fifth request) - Clearinghouse Rule 04-110

Senate Committee on Job Creation, Economic Development and Consumer Affairs
Assembly Committee on Colleges and Universities

Dear Senator Kanavas and Representative Kriebich,

This letter is a request to make three additional germane modifications to Clearinghouse Rule 04-110, a proposed order of the Department relating to the regulation of athlete agents. This request is made under Wis. Stats. § 227.19 (4) (b) 3., in order to make a third, fourth and fifth germane modification to the proposed rules. By previous correspondence, dated March 4, 2005, two previous germane modification requests were forwarded to your committees.

Germane Modification Request- Three

The proposed permanent rules currently contain the following provision:

RL 153.09 Prohibited Conduct.

(2) An athlete agent shall not intentionally do any of the following:

(a) Initiate contact with a student athlete unless registered as an athlete agent. As used herein, "initiate contact" includes all persons employed or contracted for any consideration paid by the athlete agent or the athlete agent's business or employer who either directly or indirectly, solicits, recruits or recommends student athletes on the applicant's behalf.

Following discussion with committee staff and a representative of the University of Wisconsin, the Department requests in the interest of clarity to delete the second sentence of RL 153.09 (2)(a).

The modified provision would read as follows:

RL 153.09 Prohibited Conduct.

(2) An athlete agent shall not intentionally do any of the following:

(a) Initiate contact with a student athlete unless registered as an athlete agent.

Germane Modification Request- Four

RL 152.01 currently reads as follows:

RL 152.01 Certificate of Registration renewal. A registrant who desires to renew a certificate of registration shall submit to the department an application form for renewal that is signed by the registrant under penalty of perjury and contains current information on all matters required in an original application form for registration under s. RL 152.02 and pay the fee specified in s. RL 151.02.

It was pointed out to the Department that “s. RL 152.02” and “s RL 151.02” are reversed. The Department intends to switch the order of these two section designations in the final rules.

Germane Modification Request- Five

Wis. Stats. § 440.9935, allows the department to set a renewal fee by administrative rule. Athlete agents will first begin to renew their credentials beginning July 1, 2006.

However, section 440.9935 requires the Department to set the renewal fee based on “the department’s administrative and enforcement costs attributable to processing applications and regulating athlete agents” At this time the Department does not have data regarding the costs of regulating athlete agents or any discipline history for the profession. The Department will not have this information prior to July 1, 2006, or a reasonable time prior to that date. (Necessary to backtime for rulemaking.)

Therefore, the Department proposes to create and insert, a new RL 152.02, to set the renewal fee at the standard \$53 fee. Current RL 152.02, 152.03 and 152.04 would be renumbered sequentially following the newly created RL 152.02.

This \$53 fee represents Department overhead for processing renewal applications which is one criteria under the current fee methodology for setting the renewal fee under section 440.9935. The Department can later adjust this fee when more disciplinary data is available and costs of regulating this profession have been determined.

The renewal fee is required by statute to be prorated for credential holders who are allowed to have their first renewal fee prorated based on the length of time between issuance and renewal at the rate of 1/24 of the renewal fee for each completed month that the registration is held prior to

the month of the date of renewal. Based on a \$53 renewal fee, the monthly prorated figure is \$2.208 per month, which the Department would round down to \$2.00)

Newly created Wis. Admin. Code § 152.05 would read as follows:

RL 152.05 Renewal fee. The registration renewal fee is \$53.

This request for a third, fourth and fifth germane modification is being submitted to your committees for review. Please contact me if you require further explanation of the germane modification.

Sincerely,



Chris Klein, Executive Assistant
Department of Regulation and Licensing