

SENATE BILL NO. 456—COMMITTEE ON HUMAN
RESOURCES AND FACILITIES

(ON BEHALF OF THE SECRETARY OF STATE)

MARCH 24, 2003

Referred to Committee on Human Resources and Facilities

SUMMARY—Revises various provisions of Uniform Athletes’
Agents Act. (BDR 34-153)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to the Uniform Athletes’ Agents Act; revising various provisions of the Act; authorizing the Secretary of State to conduct certain investigations, issue certain orders and impose certain sanctions; authorizing the Secretary of State to recover the costs of certain proceedings; providing for the confidentiality of certain information and documents; authorizing the Secretary of State to adopt certain regulations; providing penalties for the violation of certain provisions, regulations and orders; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** Chapter 398 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 6, inclusive, of this
3 act.
4 **Sec. 2. 1. *The Secretary of State may, within or outside this***
5 ***state:***
6 ***(a) Investigate any violation of:***
7 ***(1) A provision of NRS 398.400 to 398.496, inclusive, and***
8 ***sections 2 to 6, inclusive, of this act;***



1 (2) A regulation adopted by the Secretary of State pursuant
2 to NRS 398.400 to 398.496, inclusive, and sections 2 to 6,
3 inclusive, of this act; or

4 (3) An order denying, suspending or revoking the
5 effectiveness of a registration, or an order to cease and desist,
6 issued by the Secretary of State pursuant to NRS 398.400 to
7 398.496, inclusive, and sections 2 to 6, inclusive, of this act.

8 (b) Conduct such other investigations as he finds necessary to
9 aid in the enforcement of NRS 398.400 to 398.496, inclusive, and
10 sections 2 to 6, inclusive, of this act, and any regulation or order
11 adopted or issued by the Secretary of State pursuant thereto.

12 2. If the Secretary of State determines that a violation
13 specified in paragraph (a) of subsection 1 has occurred, the
14 Attorney General may prosecute the violation at the request of the
15 Secretary of State.

16 3. If the Attorney General declines to prosecute such a
17 violation, the district attorney of the appropriate county may
18 prosecute the violation at the request of the Secretary of State.

19 **Sec. 3. 1.** If the Secretary of State reasonably believes,
20 whether or not based upon an investigation conducted pursuant to
21 section 2 of this act, that a person has violated, or is about to
22 violate, any provision of NRS 398.400 to 398.496, inclusive, and
23 sections 2 to 6, inclusive, of this act, or any regulation or order of
24 the Secretary of State adopted or issued pursuant to NRS 398.400
25 to 398.496, inclusive, and sections 2 to 6, inclusive, of this act, the
26 Secretary of State, in addition to any specific power granted by
27 NRS 398.400 to 398.496, inclusive, and sections 2 to 6, inclusive,
28 of this act, may, without a prior hearing, issue a summary order
29 against the person, directing him to cease and desist from any
30 further acts that constitute or would constitute such a violation
31 until he is in compliance with NRS 398.400 to 398.496, inclusive,
32 and sections 2 to 6, inclusive, of this act. The summary order to
33 cease and desist must specify the section of NRS 398.400 to
34 398.496, inclusive, and sections 2 to 6, inclusive, of this act, or the
35 regulation or order of the Secretary of State adopted or issued
36 pursuant to NRS 398.400 to 398.496, inclusive, and sections 2 to 6,
37 inclusive, of this act, which the Secretary of State reasonably
38 believes has been or is about to be violated.

39 2. If the Secretary of State reasonably believes, whether or
40 not based upon an investigation conducted pursuant to section 2
41 of this act, that a person has violated any provision of NRS
42 398.400 to 398.496, inclusive, and sections 2 to 6, inclusive, of this
43 act, or any regulation or order of the Secretary of State adopted or
44 issued pursuant to NRS 398.400 to 398.496, inclusive, and
45 sections 2 to 6, inclusive, of this act, the Secretary of State, in



1 *addition to any specific power granted by NRS 398.400 to 398.496,*
2 *inclusive, and sections 2 to 6, inclusive, of this act, after giving*
3 *notice by registered or certified mail and conducting a hearing in*
4 *an administrative proceeding, unless the right to notice and*
5 *hearing is waived by the person against whom the sanction is*
6 *imposed, may:*

- 7 (a) *Issue an order against the person to cease and desist;*
- 8 (b) *Censure the person if he is a registered athlete's agent;*
- 9 (c) *Suspend, revoke or refuse to renew the registration of the*
10 *person as an athlete's agent; or*
- 11 (d) *If it is determined that the violation was willful, issue an*
12 *order against the person imposing an administrative fine of not*
13 *more than \$25,000.*

14 3. *If the person to whom notice is given pursuant to*
15 *subsection 2 does not request a hearing within 45 days after*
16 *receipt of the notice, he waives his right to a hearing and the*
17 *Secretary of State shall issue a permanent order. If the person*
18 *requests a hearing, the Secretary of State shall set the matter for*
19 *hearing not less than 15 or more than 60 days after he receives the*
20 *request for a hearing. The Secretary of State shall promptly notify*
21 *the parties by registered or certified mail of the time and place set*
22 *for the hearing.*

23 4. *The imposition of the sanctions provided in this section is*
24 *limited as follows:*

- 25 (a) *If the Secretary of State revokes the registration of an*
26 *athlete's agent, the imposition of that sanction precludes the*
27 *imposition of an administrative fine pursuant to subsection 2; and*
- 28 (b) *The imposition by the Secretary of State of one or more*
29 *sanctions pursuant to subsection 2 with respect to a specific*
30 *violation precludes him from later imposing any other sanction*
31 *pursuant to subsection 2 with respect to that violation.*

32 5. *For the purpose of determining any sanction to be imposed*
33 *pursuant to subsection 2, the Secretary of State shall consider,*
34 *among other factors, how recently the conduct occurred, the*
35 *nature of the conduct and the context in which it occurred, and*
36 *any other relevant conduct of the applicant.*

37 6. *If a sanction is imposed pursuant to this section, the*
38 *Secretary of State may recover the costs of the proceeding,*
39 *including, without limitation, investigative costs and attorney's*
40 *fees, from the person against whom the sanction is imposed.*

41 **Sec. 4. 1.** *For the purposes of an investigation or*
42 *proceeding pursuant to NRS 398.400 to 398.496, inclusive, and*
43 *sections 2 to 6, inclusive, of this act, the Secretary of State or any*
44 *officer or employee designated by the Secretary of State by*
45 *regulation, order or written direction may conduct hearings,*



1 administer oaths and affirmations, render findings of fact and
2 conclusions of law, subpoena witnesses and compel their
3 attendance, take evidence and require the production, by subpoena
4 or otherwise, of books, papers, correspondence, memoranda,
5 agreements or other documents or records which the Secretary of
6 State or his designated officer or employee determines to be
7 relevant or material to the investigation or proceeding. A person
8 whom the Secretary of State or his designated officer or employee
9 does not consider to be the subject of an investigation is entitled to
10 reimbursement at the rate of 25 cents per page for copies of
11 documents which he is required by subpoena to produce. The
12 Secretary of State or his designated officer or employee may
13 require or permit a person to file a statement, under oath or
14 otherwise as the Secretary of State or his designated officer or
15 employee determines, as to the facts and circumstances
16 concerning the matter to be investigated.

17 2. If the activities constituting an alleged violation for which
18 the information is sought would be a violation of NRS 398.400 to
19 398.496, inclusive, and sections 2 to 6, inclusive, of this act, had
20 the activities occurred in this state, the Secretary of State may
21 issue and apply to enforce subpoenas in this state at the request of
22 an agency or Secretary of State of another state.

23 3. If a person does not testify or produce the documents
24 required by the Secretary of State or a designated officer or
25 employee pursuant to subpoena, the Secretary of State or
26 designated officer or employee may apply to the court for an order
27 compelling compliance. A request for an order of compliance may
28 be addressed to:

29 (a) The district court in and for the county where service may
30 be obtained on the person refusing to testify or produce the
31 documents, if the person is subject to service of process in this
32 state; or

33 (b) A court of another state having jurisdiction over the person
34 refusing to testify or produce the documents, if the person is not
35 subject to service of process in this state.

36 **Sec. 5. 1.** Except as otherwise provided in subsections 2
37 and 3, the following information and documents do not constitute
38 public information and are confidential:

39 (a) Information or documents obtained by the Secretary of
40 State in connection with an investigation conducted pursuant to
41 section 2 of this act concerning possible violations of NRS 398.400
42 to 398.496, inclusive, and sections 2 to 6, inclusive, of this act; and

43 (b) Information or documents filed with the Secretary of State
44 in connection with an application for registration filed pursuant to
45 NRS 398.400 to 398.496, inclusive, and sections 2 to 6, inclusive,



1 of this act, which constitute commercial or financial information,
2 or business practices, of a person for which that person is entitled
3 to and has asserted a claim of privilege or confidentiality
4 authorized by law.

5 2. The Secretary of State may submit any information or
6 evidence obtained in connection with an investigation conducted
7 pursuant to section 2 of this act to the Attorney General or
8 appropriate district attorney for the purpose of prosecuting a
9 criminal action pursuant to NRS 398.400 to 398.496, inclusive,
10 and sections 2 to 6, inclusive, of this act.

11 3. The Secretary of State may disclose any information
12 obtained in connection with an investigation conducted pursuant
13 to section 2 of this act to any other governmental agency if the
14 disclosure is provided for the purpose of a civil, administrative or
15 criminal investigation or proceeding and the receiving agency
16 represents in writing that, under applicable law, protections exist
17 to preserve the integrity, confidentiality and security of the
18 information.

19 4. The provisions of NRS 398.400 to 398.496, inclusive, and
20 sections 2 to 6, inclusive, of this act, do not create any privilege
21 and do not diminish any privilege existing pursuant to common
22 law, a specific statute or regulation, or otherwise.

23 **Sec. 6. 1.** The provisions of NRS 398.400 to 398.496,
24 inclusive, and sections 2 to 6, inclusive, of this act, apply to a
25 person who sells or offers to sell his services as an athlete's agent
26 if:

- 27 (a) The offer is made in this state; or
- 28 (b) The offer is accepted in this state.

29 2. For the purpose of this section, an offer is made in this
30 state, whether or not either party is present in this state, if the
31 offer:

- 32 (a) Originates in this state; or
- 33 (b) Is directed by the offeror to a destination in this state and
34 received where it is directed, or at a post office in this state if the
35 offer is mailed.

36 3. For the purpose of this section, an offer is accepted in this
37 state if the acceptance:

- 38 (a) Is communicated to the offeror in this state; and
- 39 (b) Has not previously been communicated to the offeror,
40 orally or in writing, outside this state.

41 Acceptance is communicated to the offeror in this state, whether
42 or not either party is present in this state, if the offeree directs it to
43 the offeror in this state reasonably believing the offeror to be in
44 this state and it is received where it is directed, or at any post office
45 in this state if the acceptance is mailed.



1 **Sec. 7.** NRS 398.400 is hereby amended to read as follows:
2 398.400 The provisions of NRS 398.400 to 398.496, inclusive,
3 *and sections 2 to 6, inclusive, of this act*, may be cited as the
4 Uniform Athletes' Agents Act.

5 **Sec. 8.** NRS 398.404 is hereby amended to read as follows:
6 398.404 As used in NRS 398.400 to 398.496, inclusive, *and*
7 *sections 2 to 6, inclusive, of this act*, unless the context otherwise
8 requires, the words and terms defined in NRS 398.408 to 398.446,
9 inclusive, have the meanings ascribed to them in those sections.

10 **Sec. 9.** NRS 398.440 is hereby amended to read as follows:
11 398.440 "Registration" means registration as an athlete's agent
12 pursuant to ~~[this chapter.]~~ *NRS 398.400 to 398.496, inclusive, and*
13 *sections 2 to 6, inclusive, of this act.*

14 **Sec. 10.** NRS 398.472 is hereby amended to read as follows:
15 398.472 1. The Secretary of State shall adopt regulations
16 establishing fees for:

- 17 (a) An initial application for registration;
18 (b) An application for registration based upon a certificate of
19 registration or licensure issued by another state;
20 (c) An application for renewal of registration; and
21 (d) An application for renewal of registration based upon an
22 application for renewal of registration or licensure submitted in
23 another state.

24 2. The fees *established pursuant to subsection 1* must be
25 sufficient to cover the costs of administration of the Uniform
26 Athletes' Agents Act.

27 3. *The Secretary of State may adopt:*

28 (a) *Regulations further defining such words and terms as are*
29 *necessary for an understanding of the provisions of NRS 398.400*
30 *to 398.496, inclusive, and sections 2 to 6, inclusive, of this act, and*
31 *any regulations adopted pursuant thereto; and*

32 (b) *Such other regulations as he determines necessary to carry*
33 *out the provisions of NRS 398.400 to 398.496, inclusive, and*
34 *sections 2 to 6, inclusive, of this act.*

35 **Sec. 11.** NRS 398.480 is hereby amended to read as follows:

36 398.480 1. An athlete's agent shall retain the following
37 records for 5 years:

- 38 (a) The name and address of each natural person he represents;
39 (b) Any contract of agency into which he enters; and
40 (c) Any direct cost he incurs in recruiting or soliciting a student
41 athlete to enter into a contract of agency.

42 2. Records required by this section to be retained ~~[are]~~ :

43 (a) *Are* open to inspection by the Secretary of State during
44 normal business hours ~~[;]~~ ; *and*



1 ***(b) May be maintained in any form of data storage if they are***
2 ***readily accessible to the Secretary of State.***

3 ***3. If the information contained in a document filed with the***
4 ***Secretary of State as part of an application for registration is or***
5 ***becomes inaccurate or incomplete, the registered person shall file***
6 ***correcting information within 30 days.***

7 **Sec. 12.** NRS 398.496 is hereby amended to read as follows:

8 398.496 1. An athlete's agent shall not, with the intent to
9 induce a student athlete to enter into any contract:

10 (a) Give any materially false or misleading information or make
11 a materially false promise or representation;

12 (b) Furnish anything of value to the student athlete before the
13 student athlete enters into the contract; or

14 (c) Furnish anything of value to a natural person other than the
15 student athlete or another registered athlete's agent.

16 2. An athlete's agent shall not intentionally:

17 (a) Initiate communication, direct or indirect, with a student
18 athlete to recruit or solicit him to enter into a contract of agency,
19 unless the agent is registered pursuant to ~~[[this chapter]]~~ ***NRS***
20 ***398.400 to 398.496, inclusive, and sections 2 to 6, inclusive, of this***
21 ***act;***

22 (b) Refuse or fail to retain or permit inspection of records
23 required to be retained pursuant to NRS 398.480;

24 (c) Fail to register when required pursuant to NRS 398.448;

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

27 (e) Predate or postdate a contract of agency; or

28 (f) Fail to notify a student athlete, before he signs or otherwise
29 authenticates a contract of agency for a particular sport, that the
30 signing or authentication will make him ineligible to participate as a
31 student athlete in that sport.

32 3. ~~[[An athlete's agent who violates this section is guilty of a~~
33 ~~gross misdemeanor.~~

34 ~~—4.— The Secretary of State may impose an administrative fine of~~
35 ~~not more than \$25,000 upon an athlete's agent for a violation of the~~
36 ~~Uniform Athletes' Agents Act.] A person who willfully violates:~~

37 ***(a) A provision of NRS 398.400 to 398.496, inclusive, and***
38 ***sections 2 to 6, inclusive, of this act;***

39 ***(b) A regulation adopted by the Secretary of State pursuant to***
40 ***NRS 398.400 to 398.496, inclusive, and sections 2 to 6, inclusive,***
41 ***of this act; or***

42 ***(c) An order denying, suspending or revoking the effectiveness***
43 ***of a registration, or an order to cease and desist, issued by the***
44 ***Secretary of State pursuant to NRS 398.400 to 398.496, inclusive,***
45 ***and sections 2 to 6, inclusive, of this act,***



1 *is guilty of a gross misdemeanor and shall be punished by*
2 *imprisonment in the county jail for not more than 1 year, or by a*
3 *fine of not more than \$25,000, or by both fine and imprisonment.*
4 *In addition to any other penalty, the court shall order the person*
5 *to pay restitution.*
6 *4. A person who violates:*
7 *(a) A regulation adopted by the Secretary of State pursuant to*
8 *NRS 398.400 to 398.496, inclusive, and sections 2 to 6, inclusive,*
9 *of this act; or*
10 *(b) An order denying, suspending or revoking the effectiveness*
11 *of a registration, or an order to cease and desist, issued by the*
12 *Secretary of State pursuant to NRS 398.400 to 398.496, inclusive,*
13 *and sections 2 to 6, inclusive, of this act,*
14 *without knowledge of the regulation or order, is guilty of a*
15 *misdemeanor and shall be punished by a fine of not more than*
16 *\$25,000.*
17 *5. The provisions of NRS 398.400 to 398.496, inclusive, and*
18 *sections 2 to 6, inclusive, of this act, do not limit the power of the*
19 *State of Nevada to punish a person for conduct which constitutes*
20 *a crime pursuant to any other law.*

