

Senate Bill No. 456—Committee on Human
Resources and Facilities

CHAPTER.....

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:

Section 1. Chapter 398 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this act.

Sec. 2. 1. *The Secretary of State may, within or outside this state:*

(a) Investigate any violation of:

(1) A provision of NRS 398.400 to 398.496, inclusive, and sections 2 to 6, inclusive, of this act;

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

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

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

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

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

Sec. 3. 1. *If the Secretary of State reasonably believes, whether or not based upon an investigation conducted pursuant to*

section 2 of this act, that a person has violated, or is about to violate, any provision of NRS 398.400 to 398.496, inclusive, and sections 2 to 6, inclusive, of this act, or any regulation or order of the Secretary of State adopted or issued pursuant to NRS 398.400 to 398.496, inclusive, and sections 2 to 6, inclusive, of this act, the Secretary of State, in addition to any specific power granted by NRS 398.400 to 398.496, inclusive, and sections 2 to 6, inclusive, of this act, may, without a prior hearing, issue a summary order against the person, directing him to cease and desist from any further acts that constitute or would constitute such a violation until he is in compliance with NRS 398.400 to 398.496, inclusive, and sections 2 to 6, inclusive, of this act. The summary order to cease and desist must specify the section of NRS 398.400 to 398.496, inclusive, and sections 2 to 6, inclusive, of this act, or the regulation or order of the Secretary of State adopted or issued pursuant to NRS 398.400 to 398.496, inclusive, and sections 2 to 6, inclusive, of this act, which the Secretary of State reasonably believes has been or is about to be violated.

2. If the Secretary of State reasonably believes, whether or not based upon an investigation conducted pursuant to section 2 of this act, that a person has violated any provision of NRS 398.400 to 398.496, inclusive, and sections 2 to 6, inclusive, of this act, or any regulation or order of the Secretary of State adopted or issued pursuant to NRS 398.400 to 398.496, inclusive, and sections 2 to 6, inclusive, of this act, the Secretary of State, in addition to any specific power granted by NRS 398.400 to 398.496, inclusive, and sections 2 to 6, inclusive, of this act, after giving notice by registered or certified mail and conducting a hearing in an administrative proceeding, unless the right to notice and hearing is waived by the person against whom the sanction is imposed, may:

- (a) Issue an order against the person to cease and desist;*
- (b) Censure the person if he is a registered athlete's agent;*
- (c) Suspend, revoke or refuse to renew the registration of the person as an athlete's agent; or*

(d) If it is determined that the violation was willful, issue an order against the person imposing an administrative fine of not more than \$25,000.

3. If the person to whom notice is given pursuant to subsection 2 does not request a hearing within 45 days after receipt of the notice, he waives his right to a hearing and the Secretary of State shall issue a permanent order. If the person requests a hearing, the Secretary of State shall set the matter for hearing not less than 15 or more than 60 days after he receives the request for a hearing. The Secretary of State shall promptly notify

the parties by registered or certified mail of the time and place set for the hearing.

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

(a) If the Secretary of State revokes the registration of an athlete's agent, the imposition of that sanction precludes the imposition of an administrative fine pursuant to subsection 2; and

(b) The imposition by the Secretary of State of one or more sanctions pursuant to subsection 2 with respect to a specific violation precludes him from later imposing any other sanction pursuant to subsection 2 with respect to that violation.

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

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

Sec. 4. 1. For the purposes of an investigation or proceeding pursuant to NRS 398.400 to 398.496, inclusive, and sections 2 to 6, inclusive, of this act, the Secretary of State or any officer or employee designated by the Secretary of State by regulation, order or written direction may conduct hearings, administer oaths and affirmations, render findings of fact and conclusions of law, subpoena witnesses and compel their attendance, take evidence and require the production, by subpoena or otherwise, of books, papers, correspondence, memoranda, agreements or other documents or records which the Secretary of State or his designated officer or employee determines to be relevant or material to the investigation or proceeding. A person whom the Secretary of State or his designated officer or employee does not consider to be the subject of an investigation is entitled to reimbursement at the rate of 25 cents per page for copies of documents which he is required by subpoena to produce. The Secretary of State or his designated officer or employee may require or permit a person to file a statement, under oath or otherwise as the Secretary of State or his designated officer or employee determines, as to the facts and circumstances concerning the matter to be investigated.

2. If the activities constituting an alleged violation for which the information is sought would be a violation of NRS 398.400 to 398.496, inclusive, and sections 2 to 6, inclusive, of this act, had the activities occurred in this state, the Secretary of State may

issue and apply to enforce subpoenas in this state at the request of an agency or Secretary of State of another state.

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

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

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

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

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

(b) Information or documents filed with the Secretary of State in connection with an application for registration filed pursuant to NRS 398.400 to 398.496, inclusive, and sections 2 to 6, inclusive, of this act, which constitute commercial or financial information, or business practices, of a person for which that person is entitled to and has asserted a claim of privilege or confidentiality authorized by law.

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

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

4. The provisions of NRS 398.400 to 398.496, inclusive, and sections 2 to 6, inclusive, of this act, do not create any privilege

and do not diminish any privilege existing pursuant to common law, a specific statute or regulation, or otherwise.

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

(a) The offer is made in this state; or

(b) The offer is accepted in this state.

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

(a) Originates in this state; or

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

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

(a) Is communicated to the offeror in this state; and

(b) Has not previously been communicated to the offeror, orally or in writing, outside this state.

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

Sec. 7. NRS 398.400 is hereby amended to read as follows:

398.400 The provisions of NRS 398.400 to 398.496, inclusive, *and sections 2 to 6, inclusive, of this act*, may be cited as the Uniform Athletes' Agents Act.

Sec. 8. NRS 398.404 is hereby amended to read as follows:

398.404 As used in NRS 398.400 to 398.496, inclusive, *and sections 2 to 6, inclusive, of this act*, unless the context otherwise requires, the words and terms defined in NRS 398.408 to 398.446, inclusive, have the meanings ascribed to them in those sections.

Sec. 9. NRS 398.440 is hereby amended to read as follows:

398.440 "Registration" means registration as an athlete's agent pursuant to ~~[this chapter.]~~ *NRS 398.400 to 398.496, inclusive, and sections 2 to 6, inclusive, of this act.*

Sec. 10. NRS 398.472 is hereby amended to read as follows:

398.472 1. The Secretary of State shall adopt regulations establishing fees for:

(a) An initial application for registration;

(b) An application for registration based upon a certificate of registration or licensure issued by another state;

(c) An application for renewal of registration; and

(d) An application for renewal of registration based upon an application for renewal of registration or licensure submitted in another state.

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

3. *The Secretary of State may adopt:*

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

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

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

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

(a) The name and address of each natural person he represents;

(b) Any contract of agency into which he enters; and

(c) Any direct cost he incurs in recruiting or soliciting a student athlete to enter into a contract of agency.

2. Records required by this section to be retained ~~{are}~~:

(a) *Are* open to inspection by the Secretary of State during normal business hours ~~{;}~~; and

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

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

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

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

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

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

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

2. An athlete's agent shall not intentionally:

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

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

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

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

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

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

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

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

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

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

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

is guilty of a gross misdemeanor and shall be punished by imprisonment in the county jail for not more than 1 year, or by a fine of not more than \$25,000, or by both fine and imprisonment. In addition to any other penalty, the court shall order the person to pay restitution.

4. A person who violates:

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

(b) An order denying, suspending or revoking the effectiveness of a registration, or an order to cease and desist, issued by the Secretary of State pursuant to NRS 398.400 to 398.496, inclusive, and sections 2 to 6, inclusive, of this act, without knowledge of the regulation or order, is guilty of a misdemeanor and shall be punished by a fine of not more than \$25,000.

5. The provisions of NRS 398.400 to 398.496, inclusive, and sections 2 to 6, inclusive, of this act, do not limit the power of the State of Nevada to punish a person for conduct which constitutes a crime pursuant to any other law.