The Long Awaited Quadruple Play: Proposed Amendments to Four Major Areas of the Alabama Athlete Agents Regulatory Act of 1997

Todd L. Erdman

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THE LONG AWAITED QUADRUPLE PLAY: PROPOSED AMENDMENTS TO FOUR MAJOR AREAS OF THE ALABAMA ATHLETE AGENTS REGULATORY ACT OF 1997

INTRODUCTION

If you pick up a recent copy of a sports magazine, local newspaper, or college press, you will often find headlines describing the dealings between sports agents and young college athletes. Unfortunately, not all of the stories are heartwarming tales of successful athletes from small towns or poor families signing large contracts with professional sports franchises. All too often, these articles are about student-athletes illegally accepting cash, jewelry and trips from dishonest sports-agents. The harsh consequences that can often destroy both the career of the athlete and the reputation of their college or university.

A few examples include:

September 17, 1997: Alabama declared defensive tackle Michael Myers ineligible and dismissed him from the football team for improper benefits received from two sports agents.¹

September 4, 1997: University of Las Vegas (UNLV) basketball players Keon Clark and Kevin Simmons were declared ineligible for part of the coming [1997-1998] basketball season because they received benefits from an unnamed sports agent during a trip to Florida in March of 1997.²

May 9, 1997: Upon learning that star basketball player Marcus Camby accepted money from a sports agent while still a student at the University of Massachusetts, the National Collegiate Athletic Association [NCAA] recently erased the University’s 1996 trip to

¹ John Zenor, Alabama's Michael Myers Dismissed from Team, MONTGOMERY ADVISOR, Sept. 18, 1997, at 1C.
² John Gilbert, Free Trip Sidelines Two Rebels, LAS VEGAS REV. J., Sept. 5, 1997, at 1A.
the Final Four, forcing the University to return its television revenues to the NCAA.\(^3\)

The impact of a student-athlete being cited for violations impacts more than just the athlete and the fans who watch them play. The suspension of a player for accepting money from an agent has a detrimental effect upon the sports program of a university, upon future recruiting, television revenues and the University’s reputation as a whole.\(^4\) Additionally, dishonest agents are destroying the reputations of young athletes, many of whom are easily tempted by the gold chains, expensive trips and lavish gifts offered by sports-agents.\(^5\) As a result, dishonest agents are under fire and the media has used strong words in describing the growing negative sentiment towards dishonest sports agents:

[Agents are] Scum bags, leeches, vermin, vampires, bloodsuckers... pick one, any one, for they all apply.\(^6\)

All it takes is one... to wrap himself around an athlete who is selfish, greedy or ignorant of the rules. Just like that, the snake can squeeze the life out of an entire team.\(^7\)

They corrupt college sports. Coaches and parents can’t repeat too often the warning to steer clear of lowlifes bearing gifts.\(^8\)

While the media lashed out with headlines, legislatures across the United States have responded with tougher laws to both punish


\(^6\) Joe Hawk, *Agent Should Be Punished for Arranging Rebel Player's Trip*, LAS VEGAS REV. J., Sept. 5, 1997, at 1C.

\(^7\) Lundy, *supra* note 5, at C2.

and deter future violations.\(^9\) One of the most recent bills, and one that provides for very strict and harsh treatment of agents and athletes alike, is the recently proposed Alabama House Bill 393 which amends the Alabama Athlete Agents Regulatory Act of 1987 [The Act].\(^{10}\) Representing a modern trend towards more rigid penalties, this bill provides a more harsh standard which other states are likely to follow.

Section I of this article will discuss the background of the dilemmas faced by student athletes and their schools. Section II will review the changes proposed by the Alabama General Assembly in response to those problems. Section III will analyze the potential effects this bill will have upon student athletes and sports agents in the United States.

I. BACKGROUND

Sports agents are the deal makers in the world of athletics. They are the people who represent professional athletes in signing contracts with sports teams, as well as securing endorsements with large companies. While agent representation is normal and nearly required for professional athletes, it is strictly prohibited for student-athletes.\(^{11}\) This is an effort by the NCAA to prevent the

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10. ALA. CODE § 8-26-1 to 40.

“professionalization” of college sports, and to keep the college sports amateur in nature.\textsuperscript{12}

As a result of the extreme competitiveness in the field of athlete agent representation,\textsuperscript{13} many agents, despite the strict prohibition, circumvent the law to ensure their acquisition of the best athletes. Consequently, while most sports agents compete in a legal manner, abuses run rampant.\textsuperscript{14} Bribes, gifts and other inducements are utilized to lure student-athletes into electing certain sports-agents for their representation.\textsuperscript{15} It is in response to this corruption that legislators across the country are racing to pass legislation to protect college sports. For example, Tennessee passed a bill which makes it a felony for agents to offer money to student athletes.\textsuperscript{16} Florida passed a similar bill which requires agents to take an examination testing their competency of the laws and rules applicable to agents working in Florida.\textsuperscript{17} Now Alabama has joined the fight, its legislature is attempting not only to keep up with the current trend, but to add more punch to their old law “giving the colleges and universities the opportunities to go after agents.”\textsuperscript{18}

\section*{II. The Bill}

In an effort to deter and punish “the unscrupulous practices by agents,” Congressman Gerald Allen of Alabama introduced Alabama House Bill 393\textsuperscript{19} providing for amendments to the Alabama Athlete Agents Regulatory Act, which currently directs the conduct of sports agents.\textsuperscript{20} The amendments will change the face of student representation in four major ways. They will 1)
modify the definition of the student-athlete, 2) expand the role of the Alabama Athlete Agent Regulatory Commission in regulation of agents and student-athletes, 3) further restrict the manner in which student-athletes and agents may contract, and 4) alter the way in which agents must keep their books and records.21

A. Modification of Definitions

While the old Act provides definitions of the parties involved in the student-athlete/agent relationship,22 the new code will provide for a more expansive definition of a student athlete.23 The new code defines a student-athlete as a student who resides in the state of Alabama, and has informed their school of their intent to play college sports.24 Additionally, the new code expands the older definition of a student to also include student athletes who do not reside in the state of Alabama, as well as any student who is enrolled and participates in a sport at a college or university.25 This change will allow prosecutors to cross state lines in an effort to enforce these important laws.

B. Expanding the role of Alabama Athlete Agent Regulatory Commission

Under the current code, a commission is appointed to oversee the relationship between student-athletes and sports agents. The current Alabama Athlete Regulatory Commission [Commission] is composed of a fifteen member panel.26 Each member is appointed by a different source, including the Governor of Alabama, the

21. Id.
22. Id. § 8-26-2.
23. ALA. H.B. 393, § 8-26-2.
24. Id.
25. Id.
Lieutenant Governor, and the Speaker of the House of the Alabama General Assembly.\(^{27}\)

Specifically, the commission regulates the athlete/agent relationship in two ways. First, the commission promulgates and amends the standards of conduct for sports agents and student-athletes.\(^{28}\) Second, because all sports agents must be registered by the commission, the commission has the responsibility of reviewing the registration applications\(^{29}\) of all of the sports agents in the state of Alabama.\(^{30}\)

While the standard setting role of the commission remains the same under the proposed amendments, the new Act will expand the power of the commission with regard to their review of the registration applications of sports agents.\(^{31}\) Currently, the commission may reject the registration application of a sports agent if they find that an agent had made false statements of material fact, misappropriated funds, or violated NCAA rules.\(^{32}\) In contrast, the new code provides the commission with additional grounds to refuse the registration of an agent. These include:

1. The agent has failed to include the agent’s name in any advertising related to the business of the athlete agent.\(^{33}\)
2. The agent has published or caused to be published false or misleading information or advertisements, or made any false promises to a student-athlete concerning employment or financial services.\(^{34}\)
3. The agent has offered anything of value to any person to induce a student athlete to enter into

\(^{27}\) Id.
\(^{28}\) Id. § 8-26-3 (j).
\(^{29}\) A "registration application" is simply the form which agents use to apply to be registered in the state of Alabama. Thus, if a sports agent's application is rejected, he may not practice his trade in Alabama. ALA. CODE. § 8-26-7.
\(^{30}\) Id.
\(^{31}\) ALA. H.B. 393, § 8-26-7.
\(^{32}\) Id.
\(^{33}\) Id. § 8-26-7 (a)(6).
\(^{34}\) Id. § 8-26-8 (a)(7).
an agreement by which the agent will represent the student-athlete. 35

4. The agent has accepted as a client a student-athlete referred by, or in exchange for, any consideration made to an employee of, or coach for, a college or university. 36

In the event the commission determines that an agent is not worthy of registration, the Code provides that the commission must notify the Secretary of State of its decision. 37 The Secretary of State then informs the agent, after which the agent has the option of appealing the decision to a State Court. 38

This newly expanded power of the commission will effectively put more dishonest agents out of work. Prior to these amendments, the commission could only deny registration for a limited number of reasons. 39 Under the new Act, the grounds for denial are not only greater in number, but they specifically forbid several of the tactics that agents may have employed in an effort to avoid prosecution under the old act.

C. Changes to the formation of contracts

The current Act furnishes the requirements which must be met in order for student-athletes and agents to enter into a contract. 40 In order to avoid unfair, unjust and oppressive contracts, the Act demands that all contracts must be approved by the commission. 41 For example, the Act provides that all contracts between student-athletes and agents must contain a clause which refers all controversies relating to the terms of the contract to the commission for adjustments. 42 In addition, the Act also requires

35. Id. § 8-26-8 (a)(8).
36. ALA. H.B. 393, § 8-26-8 (a)(9).
37. Id. § 8-26-8 (b).
38. Id. § 8-26-8 (c).
39. See generally ALA. CODE. § 8-26-7.
40. Id. § 8-26-22 (1995).
41. Id.
42. Id.
that all contracts contain a provision which affirms that the agent is, in fact, registered with the commission.43

The new Act requires even more stringent safeguards to prevent oppressive contracts.44 The new Act demands additional notice to colleges and universities, additional warnings to the parties, new restrictions upon the post-dating of contracts, and provides for damages to colleges and universities harmed by violations of the Act.45 These safeguards and warnings will not only help prevent agents from taking advantage of student athletes, but will also help protect the Universities by giving them notice of when a contract has been signed. Without such notice, many colleges and universities have been sanctioned, fined and even suspended from intercollegiate sports.


Under the new Act, upon the signing of a contract, both the student-athlete and the agent must provide notice to the college or university where the athlete attends.46 While both the agent and the athlete must provide notice, the consequences for failing to comply are drastically different for the two parties.47

The student-athlete must notify his or her college either within 72 hours of entering into a contract, or prior to participating in a school sponsored athletic event, whichever event occurs first.48 Failure to provide the requisite notice will result in a misdemeanor, and, upon conviction, the athlete could be fined up to $1,000 and be required to perform up to 70 hours of community service.49

While these penalties may seem harsh, they are relatively lenient when compared to what will happen to an agent if they fail to furnish the required notice. Like the student-athlete, the agent is required to notify the college or university of a contract within 72 hours, or before the athlete participates in a school sponsored

43. Id.
44. Ala. H.B. § 8-26-22.
45. Id.
46. Id.
47. Id.
48. Id. § 8-26-22(a).
49. Ala. H.B. 393, § 8-26-22(a).
event, whichever occurs first. However, unlike the student-athlete, the agent who neglects to inform the college or university of a contract will be guilty of a class B felony. In Alabama, a class B felony is punishable by up to 20 years in jail and a $10,000 fine.

This change is meant to protect the schools from unknowingly allowing athletes to participate in collegiate sports after they have agreed to be represented by a sports-agent. Under the new Act, the school must be provided with notice when a contract is signed, thus giving them the opportunity to protect themselves from NCAA violations by disqualifying the student-athlete from participating in sports.

2. Warnings

The new Act also requires that particular warnings be contained within all student-athlete contracts. If any of these provisions are not included in a student-athlete contract, it is deemed void and unenforceable. First, all contracts must contain a clause which explains that both the student-athlete and the agent must give the requisite notice to the school when they sign a contract. Next, all contracts must contain a provision which warns the student-athlete that he or she should read the entire contract before signing it, making sure that all of the blanks are filled in accordingly. Finally, all contracts must contain a rescinding clause, complete with a warning that even if the student-athlete rescinds the contract, there is a chance that the athlete may still not be allowed to participate in college sports. Specifically, the clause must state:

50. Id. § 8-26-22(b).
51. Id.
52. ALA. CODE § 13A-5-6 (a)(2).
53. Id. § 13A-5-11 (1)(2).
54. ALA. H.B. 393 § 8-26-22 (c).
55. Id. § 8-26-22 (d).
56. Id. § 8-26-22 (e).
57. Id.
58. Id. § 8-26-22 (g).
You may cancel this contract by notifying the athlete agent in writing of your desire to cancel not later than the 15th day after the date you sign this contract. However, if you cancel this contract, the National Collegiate Athletic Association ... may not restore your eligibility to participate in intercollegiate athletics.59

Such a rescinding clause may not be waived, and any attempt to do so will render the contract unenforceable.60

This change is important because it puts the athlete on notice of the consequences of their actions. These warnings make it clear that by signing a contract, he or she will likely never be eligible to play college sports. Without such warnings, it is likely that even the most intelligent athlete may not have a full knowledge of the facts, and thus fall prey to a capitalizing sports-agent.

3. Post dating prohibited

Much like post-dating a check, many student-athletes and agents have attempted to circumvent these rules by simply post-dating contracts so that it would not take effect until after the athlete has graduated or left school. The new Act clearly prohibits such contracts, and holds any post-dated contract as null and void.61 In addition to rendering the contract void and unenforceable, post-dating carries a heavy price. Similar to the penalty for the notice requirement, for the agent post-dating of a contract is a class B felony, punishable by 20 years in prison, and up to $10,000 in fines.62 For the athlete, post-dating can result in a $1,000 fine and up to 70 hours of community service.63

The proposed amendment is crucial because it prevents the agents and athletes from avoiding the requirements of the Act. While it may be perfectly honest for individuals to post-date personal checks to avoid the consequences of an insufficient bank balance, it would be a total contradiction of the goals of the Act to
allow the parties to contract simply because the contracts are dated to take effect after the athlete graduates. If this were allowed, the agents would continue to employ the same dishonest tactics as they did before, but only under the auspices of signing a contract in the future.

4. Damages

The most significant amendment to the Act is the liability which may be imposed upon the student-athlete and their agent for violating the rules. Under the proposed bill, a college or university could hold a student-athlete and their agent liable if the school is “penalized, disqualified or suspended from participation in intercollegiate athletics by a national association for the promotion and regulation of intercollegiate athletics.”

For example, suppose an Alabama college basketball team made an appearance in the NCAA National Championship game. Presume that after the game, it is discovered that one of the players on the team had signed a contract with a sports agent prior to the game. After the discovery, the team was required to then forfeit their championship and give back all television revenues which they had earned. In addition, the school is slapped with NCAA violations and the school is put on probation. Under the new Act, all of the damages resulting from such a forfeiture, or any other penalties imposed upon the school, could be recovered in a suit against the student-athlete and the agent.

Damages include loss of revenue from media coverage, loss of right to grant athletic scholarships, loss of right to recruit an athlete, losses resulting from prohibition from participating in post season athletic competition, losses as a result of being forced to forfeit an athletic contest and any other adverse financial losses which the university can prove in a court of law. Finally, the

64. Id. § 8-26-22(i).
65. Although this is a hypothetical, a similar event occurred in Massachusetts regarding Marcus Camby. The University of Massachusetts was left footing the bill for the NCAA violations.
damages include not only actual and punitive damages, but also court costs and attorney’s fees. 68

This amendment is likely to have the strongest effect upon sports agents and student athletes. A college athlete or an agent is potentially liable for hundreds of thousands of dollars in damages is likely to deter them from breaking these laws in the future. While the other changes to the Act will also deter illegal actions, hitting agents and athletes in the pocketbook will make their activities an enormous economic gamble and give colleges and universities the power to go after the wrongdoers, and hold them accountable.

D. Inspection of Books

In order to keep a check on athlete-agents, the old act provides that all registered agents must keep complete financial and business records for the Commission to inspect during normal business hours. 69 The amendments will require that the books, records and papers be kept current for up to four years from the date of entry. 70 In addition, any refusal or failure of an agent to provide the Commission with access to financial and business records would be basis for disciplinary action by the Commission. 71

The effect of this change will be to require agents to keep their records more accurate and for a longer period of time, and will prevent agents from hiding their illegal activities by claiming that the records were destroyed or otherwise misplaced.

III. EFFECTS

Several prominent athletes and legislators have expressed their opinions about the bill and its possible effects upon the industry. “If the Bill passes, it could be a blueprint to future legislation for

68. Id.
71. Id.
the NCAA to look at," said Quentin Riggins, Alabama House and Senate liaison and a former Auburn football player.\textsuperscript{72} Auburn football coach Terry Bowden feels that the blame should not rest solely on the agents. "It's a two way street. An agent's not going to do anything if a player doesn't let him."\textsuperscript{73} Alabama football coach Mike DuBose also agrees that this type of legislation is needed. "The state of Alabama needs some harder, tougher legislation concerning agents... There's nothing illegal about an agent talking to a player... [but] there's absolutely zero an agent can do for a player until he graduates."\textsuperscript{74}

If passed, the positive effects of this bill would be felt on many different fronts. First, the bill is a strong deterrent against agents from taking advantage of misguided or misinformed student-athletes. The warning requirements would make the athlete at least aware of the ramifications of signing a contract and would make students cognizant of their rights to rescind a contract in the event that they change their mind. Additionally, the bill will prevent many agents who have committed previous violations of the Act from continuing to represent student-athletes. While this cannot guarantee that agents will not violate the Act, it will at least eliminate many of the dishonest agents.

In addition to protecting student-athletes, the proposed Act would help soften the blow to innocent colleges and universities who are punished for unknowingly allowing agent-represented athletes to play in college sports. Under the proposed bill, when a college or university unknowingly allows such an athlete to participate, they will be able to pass down all of the liability to the athlete and the agent.\textsuperscript{75} This will include, but not be limited to, losses due to any NCAA violations, as well as any television revenues lost by the school as a result of a suspension.\textsuperscript{76}

Finally, in addition to helping innocent schools who have been damaged by the unscrupulous acts of agents and athletes, the Act will deter future violations by severely punishing those who are

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\textsuperscript{72} John Zenor, Spotlight Returns To Agents, Myers Case Raises New Concerns, MONTGOMERY ADVISOR, Sept. 7, 1997, at 3E.
\textsuperscript{73} Id.
\textsuperscript{74} Id.
\textsuperscript{75} See supra note 65.
\textsuperscript{76} Id.
\end{flushright}
convicted of violations. Agents could spend up to 20 years in jail, and be fined $10,000 for violations of provisions of the Act, while athletes could be fined $1,000, and be ordered to perform up to 70 hours of community service.\textsuperscript{77} The thought of a star-athlete spending 70 hours picking up trash or an agent being behind bars for 20 years should send a powerful message to those who are contemplating violating the law.

While these are all positive results of the bill, there are also some drawbacks. Not all student-athletes are alike. Many of the athletes come from affluent families, and have parents who are knowledgeable and able to nurture and guide the athlete to possible stardom. However, some student-athletes come from underprivileged backgrounds, where they are not likely to get such advice and attention.

As one college football player described, "If you are broke, and all you’ve got is your dorm life and dorm food, it’s easier for the agents to get you."\textsuperscript{78} While it is no excuse to break the law, it is a reasonable hypothesis that the student-athlete with less resources may be more likely to succumb to the temptations which a dishonest agent would offer. University of Las Vegas’ senior athletics director, David Chambers, said “these agents know most student-athletes are easy marks, because they’re not employed and most don’t come from wealthy families.”\textsuperscript{79} Thus, while the Act is meant to punish everyone equally, it may disproportionately effect poor student athletes.

Consequently, schools need to ensure that student athletes are educated about these laws, and be certain that students are cognizant of the harsh penalties that can result if they choose to violate them. While the possibility of discriminatory application is present, colleges and universities can remedy this by simply reaching out to their students and making them aware of what conduct is prohibited under new laws.

\textsuperscript{77} ALA. H.B. 393, § 8-26-22; See also ALA. CODE §§ 13A-5-11(b) & 13A-5-6(a)(2).

\textsuperscript{78} Zenor, supra note 72, at 3E.

\textsuperscript{79} Hawk, supra note 6, at 1C.
While not every agent, coach and legislator will agree, this bill is long overdue. In the past, when a college or university has been sanctioned for unknowingly allowing an athlete to participate in sports while represented by an agent, the colleges or university suffered the majority of the consequences. College sports programs throughout the country have been punished, fined and forced to return television revenues. Meanwhile, the agents and the student-athletes have been dealt with in a relatively lenient manner.

This bill will change that. Much like the old saying that one should "give credit where credit is due," this bill gives liability where liability is due. This not only makes sense, but it should have been the rule from the start.

Alabama House Bill 393\textsuperscript{80} represents not only the modern trend towards dealing more harshly with dishonest athletes and agents, but helps to ensure that college sports will continue to exist as an amateur institution. The combination of expanding the definition of who is affected under the act, giving more strength to the governing body (the commission), changing the methods in which the parties may contract and demanding that agents keep more accurate records will provide the desperately needed "quadruple play" that colleges sports has been rooting for.

\textit{Todd L. Erdman}

\textsuperscript{80} ALA. H.B. 393, Reg. Sess., 1997.