

# STATEMENTS OF POLICY

## Title 58—RECREATION

### STATE ATHLETIC COMMISSION

[58 PA. CODE CH. 41]

#### Athletic Agents

On January 27, 1998, the Pennsylvania General Assembly enacted 5 Pa.C.S. Part II (relating to athletic agents) (act) requiring registration of athletic agents. The act became effective March 28, 1998. For calendar year 1999 to date (April 26, 1999), 26 agents within this Commonwealth and 39 agents residing outside this Commonwealth have registered as athletic agents. This statement of policy provides guidance to athletic agents seeking to comply with the act.

Under 5 Pa.C.S. § 3102 (relating to definitions), an "athletic agent" is defined as a "person who *directly or indirectly* recruits or solicits a person to enter into an agent contract or professional sport services contract or who procures, offers, promises or attempts to obtain employment for a person with a professional sports team as a professional athlete." (emphasis added) An "agent contract" is defined in the same section as "[a]ny contract or agreement pursuant to which a person authorizes or empowers an athletic agent to negotiate or solicit on behalf of the person with one or more professional sports teams for the employment of the person by a professional sports team as a professional athlete."

Section 3301 of the 5 Pa.C.S. (relating to athletic agent registration) requires registration of all persons, whether or not they reside in this Commonwealth, who "*directly or indirectly* serve or offer to serve as an athletic agent unless the person has first procured athletic agent registration" from the State Athletic Commission (Commission) (emphasis added). In addition, 5 Pa.C.S. § 3302 (relating to application for registration) specifies the procedures and fees for registration of athletic agents, while 5 Pa.C.S. § 3303 (relating to qualification for registration) addresses the qualifications for registration. The reference to out-of-State athletic agents in 5 Pa.C.S. § 3302(d) clarifies that their negotiations with sports teams or promoters in this Commonwealth on behalf of any athlete, wherever they are located, would trigger the registration and reporting requirements.

The fact that all athletic agents (both in-State and out-of-State agents) should be covered by this act is demonstrated by three important items. The first is clearly stated in the Legislative history during the debate that occurred on the Senate floor as this legislation was considered. References to two out-of-State athletic agents from different states were specifically made during the Senate floor debate of January 21, 1998. See pages 1357—1358. It is clear from the floor debate that the Senate intended that this law apply to all out-of-State athletic agents as well as to athletic agents residing in this Commonwealth. Section 1921 of the Statutory Construction Act of 1972, 1 Pa.C.S. § 1921 (relating to legislative intent controls) provides information on the

intent of the statute and the "mischief to be remedied." Furthermore, there is no mention in the Legislative history of any limitation of the act to only professional sports teams or promoters located solely within this Commonwealth.

The Legislative history demonstrates that the General Assembly required the registration of all athletic agents who enter this Commonwealth either directly or indirectly from any location (within or outside this Commonwealth) to procure employment contracts with athletes located in this Commonwealth. This would include any means of direct or indirect contact, including telephonic, electronic, mail, electronic mail or personal contact. In this technological age, a variety of methods are available to athletic agents to contact athletes located in this Commonwealth.

The second demonstration of the Legislative intent to include both in-State and out-of-State athletic agents in the registration requirements of the act is the great lengths to which the General Assembly went in other portions of this Legislation to fully protect Commonwealth athletes. As noted in the Senate floor debate of January 21, 1998, abuses by some out-of-State agents in the past have acted as an incentive for the General Assembly to include a variety of preventative and enforcement measures within our Legislation.

To ensure the complete protection of athletes located within this Commonwealth, the General Assembly included provisions in 5 Pa.C.S. § 3304 (relating to issuance of registration to certain persons prohibited) to prohibit the issuance of registration to those convicted of certain offenses and to prohibit registration to those who act as athletic agents without registering with the Commission. Likewise, 5 Pa.C.S. § 3305 (relating to unlawful actions by athletic agents) prohibits unlawful activities by athletic agents, while 5 Pa.C.S. § 3306 (relating to suspension and revocation of registration) provides for the suspension and revocation of registration of athletic agents who commit unlawful actions. To provide for enforcement of these protections of Commonwealth athletes, 5 Pa.C.S. § 3307 (relating to bonding requirements) requires the bonding of all athletic agents (which may be used to pay damages for the actions of athletic agents), and 5 Pa.C.S. § 3309 (relating to penalty and injunctive relief) allows the Commission to impose civil penalties or injunctive relief.

Finally, the third justification for the inclusion of both in-State and out-of-State athletic agents in the registration requirements of the act is found in the Statutory Construction Act at 1 Pa.C.S. § 1932 (relating to statutes "in pari materia"). Section 1932 specifically requires that all sections of a statute are to be read "in pari materia." That is, all sections of the statute are to be read together as a whole. In 5 Pa.C.S. § 3301, registration with the Commission is required of all persons who directly or indirectly serve as athletic agents. Furthermore, the definition of "athletic agent" in 5 Pa.C.S. § 3102 defines an athletic agent as a person who directly or indirectly recruits or solicits a person to enter into an

agent contract or a professional sport services contract or who offers employment for a professional sports team as a professional athlete. Finally, the definition of "agent contract" in 5 Pa.C.S. § 3102 is defined as any contract to which a person authorizes or empowers an athletic agent to negotiate or solicit on behalf of the person with one or more professional sports teams for the employment of the person as a professional athlete. These two key definitions in 5 Pa.C.S. § 3102 and the registration requirements for athletic agents in 5 Pa.C.S. § 3301 contain no mention of the limitation to sports teams or promoters located within this Commonwealth.

Therefore, the reference to out-of-State athletic agents in 5 Pa.C.S. § 3302(d) should be interpreted to clarify that their negotiations of professional sport services contracts with sports teams or promoters in this Commonwealth with athletes who are located in this Commonwealth as well as located outside this Commonwealth would trigger their registration and reporting requirements in this Commonwealth. By reading all of the sections of the act "in pari materia," it is clear that the act requires two types of registration for out-of-State athletic agents. First, 5 Pa.C.S. § 3301 requires the registration in advance of all athletic agents, wherever they reside, who directly or indirectly recruit or solicit a person located within this Commonwealth to enter into an agent contract or agreement which authorizes or empowers an athletic agent to negotiate or solicit on behalf of an athlete with any professional sports team in any location. Second, 5 Pa.C.S. § 3302(d) requires notification within 7 days and registration within 30 days of all athletic agents for any professional athletes, wherever they are located, when the athletic agent is negotiating a sports services contract with any Commonwealth sports team or promoter.

This statement of policy is not intended to circumscribe any administrative discretion given to the Department of State under any law or rule or regulation. This statement of policy is effective upon publication in the *Pennsylvania Bulletin*. Questions on this statement of policy can be addressed to the State Athletic Commission at (717) 787-5720.

(*Editor's Note:* The regulations of the Commission, 58 Pa. Code Part I are amended by adding a statement of policy in §§ 41.1—41.3 to read as set forth in Annex A.)

KIM PIZZINGRILLI,  
*Secretary of the Commonwealth*

**Fiscal Note:** 16-21. No fiscal impact; (8) recommends adoption.

**Annex A**  
**TITLE 58. RECREATION**  
**PART I. STATE ATHLETIC COMMISSION**  
**Subpart D. ATHLETIC AGENTS**  
**CHAPTER 41. ATHLETIC AGENTS—STATEMENT OF POLICY**

- Sec.  
41.1. Athletic agents required to register.  
41.2. Evidence of acting as athletic agent.  
41.3. Professional sports services contracts with Commonwealth sports teams or promoters.

**§ 41.1. Athletic agents required to register.**

This chapter announces the Commission's interpretation of 5 Pa.C.S. Part II (relating to athletic agents). The Commission interprets 5 Pa.C.S. § 3301 (relating to athletic agent registration) as requiring all athletic agents, whether or not they reside in this Commonwealth, to register with the Commission when they directly or indirectly serve or offer to serve as an athletic agent, as defined in 5 Pa.C.S. § 3102 (relating to definitions), for any athlete located in this Commonwealth.

**§ 41.2. Evidence of acting as athletic agent.**

The signing of an agent contract, as defined in 5 Pa.C.S. § 3102 (relating to definitions), will be regarded as evidence of acting as an athletic agent, unless the athletic agent can prove that no contacts of any kind were made in this Commonwealth. This would include any means of direct or indirect contact, including telephonic, electronic, mail, electronic mail or personal contact.

**§ 41.3. Professional sports services contracts with Commonwealth sports teams or promoters.**

The Commission interprets 5 Pa.C.S. § 3302(d) (relating to application for registration) as requiring all out-of-State athletic agents to register with the Commission when they negotiate any professional sport services contract for all athletes, whether or not they are located within this Commonwealth, who perform with a professional sports team or a promoter in this Commonwealth. Under 5 Pa.C.S. § 3302(d)(2), an out-of-State agent representing an athlete is required to notify the Commission within 7 days of commencing negotiations for a sports services contract with a Commonwealth professional sports team or promoter. Under 5 Pa.C.S. § 3302(d)(3), the out-of-State agent representing an athlete is required to complete a registration application within 30 days of commencing negotiations for a sports services contract with a Commonwealth professional sports team or promoter.

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