

Clearinghouse Rule 20-029

STATE OF WISCONSIN
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF SAFETY AND
DEPARTMENT OF SAFETY AND : PROFESSIONAL SERVICES
PROFESSIONAL SERVICES : ADOPTING RULES
: (CLEARINGHOUSE RULE TBD)

PROPOSED ORDER

An order of the Department of Safety and Professional Services to repeal SPS 151.03, 151.05, 152, 153 and 154.01 (7); to repeal and recreate SPS 150.02, 151.01, 151.02, and 151.04; and to create SPS 151.02 (note), 151.06, 151.07, 154.01 (4g), (4r), (12), (13), and (14).

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Sections 440.09, 440.9915, and 440.999, Stats.

Statutory authority: Sections 227.11 (2) (a), 440.09 (5), 440.9915, and 440.999, Stats.

Explanation of agency authority:

Section 227.11 (2) (a), Stats. states that “[e]ach agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute...”

Section 440.09 (5), Stats. states that “[t]he department or credentialing board, as appropriate, may promulgate rules necessary to implement this section.”

Section 440.9915, Stats. states that “[a]n applicant for registration as an athlete agent shall submit an application for registration to the department in a form prescribed by the department.”

Section 440.999, Stats. states that “The department shall promulgate rules that define unprofessional conduct for purposes of s. 440.992 (2) (c).”

Related statute or rule: None.

Plain language analysis:

This rule project updates the definitions sections of SPS 150 and 151 to incorporate the new definitions pertinent to athlete agents that were created by 2019 Wisconsin Acts 143 and 180.

SPS 151 and 152 are revised to remove sections that are either obsolete or duplicative. The application content section and denial of issuance or renewal of certificate of registration sections, SPS 151.02, 151.05, and 152.04 are entirely duplicative of statutory requirements, therefore this rule project repeals them. SPS 151.03, 152.02, and 152.05 are repealed as obsolete in listing the credential fee amount, as this information is no longer generally provided in rule, but in a listing on the department's website for each credential.

SPS 151 is revised to better instruct applicants on the process and requirements to apply for an original certificate of registration, a reciprocal certificate generally, a reciprocal certificate for service members, former service members, and spouses under s. 440.09, as well as to incorporate instructions for renewing original or reciprocal certificates as had been previously included under SPS 152.

SPS 153.01 to 153.07 are repealed as these requirements are all purely duplicative of statutory requirements. The remaining components of ch. SPS 153, SPS 153.08 to 153.10, are merged into ch. SPS 154 relating to unprofessional conduct. Additional provisions are created in ch. SPS 154 to reflect that unlicensed practice, assisting or allowing unlicensed practice, and violating the statutory requirements for contract components, etc. are considered unprofessional conduct.

Summary of, and comparison with, existing or proposed federal regulation:

The Sports Agent Responsibility and Trust Act regulates athlete agents at the federal level.

Consumer Protection Provisions: 15 U.S.C. § 7802 to 7804

Athlete agents are prohibited from using false or misleading promises or things of value to persuade an athlete into signing an agency contract. It also requires a disclosure be provided to the athlete or his parent/guardian, and be acknowledged, that signing an agency contract may terminate the athlete's eligibility to participate in college athletics, and that the athlete and the athlete agent must both inform the athletic director of the athlete's institution of the contract within 72 hours. Further, athlete agents are prohibited from pre or post-dating a contract. Enforcement is carried out under the Federal Trade Commission Act or may be investigated, and violations pursued by a state attorney general.

Protections for Educational Institutions: 15 U.S.C. § 7805

Educational institutions affected by an agency agreement may sue athlete agents for damages.

Sense of Congress Declaration: 15 U.S.C. § 7807

Congress recommends that states adopt the UAAA.

Summary of public comments received on statement of scope and a description of how and to what extent those comments and feedback were taken into account in drafting the proposed rule: N/A.

Comparison with rules in adjacent states:

Illinois:

Illinois has repealed its athlete agent act and no longer requires or issues a credential for the athlete agent profession.

Iowa:

Iowa does not have administrative rules regulating athlete agents but adopts the UAAA in statute (IA Stats. § 9A.114).

Michigan:

Michigan does not have statutes or administrative rules specific to the regulation of athlete agents.

Minnesota:

Minnesota does not have administrative rules for the regulation of athlete agents but does adopt the RUAAA as Wisconsin does (MN Stats. § 81A).

Summary of factual data and analytical methodologies:

2019 Wisconsin Acts 143 and 180 require that the department update its rules relating to athlete agents to implement the statutory changes enacted by these acts.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

The rule draft was posted on the department's website for 14 days in order to solicit comments from small businesses on potential economic impact.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis are attached.

Effect on small business:

No impact.

Agency contact person:

Jon Derenne, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-266-0955; email at DSPSAdminRules@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Jon Derenne, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received on or before the public hearing scheduled for 11:00 AM on August 28, 2020 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. SPS 150.02 is repealed and recreated to read:

SPS 150.02 Definitions; generally. As used in chs. SPS 150 to 154:

- (1) “Athlete agent” has the meaning given in s. 440.99 (2), Stats.
- (2) “Department” means the department of safety and professional services.
- (3) “Educational institution” has the meaning given in s. 440.99 (4r), Stats.
- (4) “Registration” has the meaning given in s. 440.99 (9), Stats.
- (5) “State” has the meaning given in s. 440.99 (10), Stats.
- (6) “Student athlete” has the meaning given in s. 440.99 (11), Stats.

SECTION 2. SPS 151.01 is repealed and recreated to read:

SPS 151.01 Definitions; this chapter. As used in this chapter:

- (1) “Former service member” has the meaning provided in s. 440.09 (1) (a), Stats.
- (2) “Service member” has the meaning provided in s. 440.09 (1) (b), Stats.
- (3) “Spouse” has the meaning provided in s. 440.09 (1) (c), Stats.

SECTION 3. SPS 151.02 is repealed and recreated to read:

SPS 151.02 Applications. An applicant for an athlete agent certificate of registration under s. 440.9915 (1), Stats. shall submit all the following to the department:

- (1) A completed application form provided by the department.
- (2) The fee required under s. 440.03 (9) (a), Stats.
- (3) For applicants who have a pending criminal charge or have been convicted of a crime, subject to ss. 111.321, 111.322, and 111.335, Stats., all related information necessary for

the department to determine whether the circumstances of the pending criminal charge or conviction are substantially related to the practice of an athlete agent.

SECTION 4. SPS 151.02 (note) is created to read:

Note: Application forms are available on the department's website at <https://dsps.wi.gov/pages/Home.aspx>, or by request from the Department of Safety and Professional Services, P.O. Box 8935, Madison, WI 53708, or call (608) 266-2112.

SECTION 5. SPS 151.03 is repealed.

SECTION 6. SPS 151.04 is repealed and recreated to read:

SPS 151.04 Reciprocity; generally. (1) An individual registered as an athlete agent in another state may apply for a certificate of registration as an athlete agent in this state by submitting to the department all the following:

- (a) A copy of the application for registration in the other state.
- (b) A statement identifying any material change in information or verifying there is no material change in information on the application for registration in the other state.
- (c) A copy of the certificate of registration from the other state.
- (d) The fee required under s. 440.05 (2), Stats.

(2) The department shall issue a certificate of registration to an applicant who has submitted the materials required in s. SPS 151.04 (1) if all of the following are true:

- (a) The application and registration requirements of the other state are substantially similar to or more restrictive than the requirements for registration under s. 440.992, Stats.
- (b) The registration of the other state has not been revoked or suspended and no action involving the individual's conduct as an athlete agent is pending against the individual or the individual's registration in any state.

SECTION 7. SPS 151.05 is repealed.

SECTION 8. SPS 151.06 and 151.07 are created to read:

SPS 151.06 Reciprocity for service members, former service members, and spouses of service members or former service members.

(1) A service member, former service member, or spouse of a service member or former service member who resides in this state, may apply for a reciprocal credential by submitting the documentation and fee required in s. SPS 151.04 (1).

(2) The department shall issue a certificate of registration to a service member, former service member, or spouse of a service member or former service member if the following are true:

- (a) The individual holds a license, certification, registration, or permit that was granted by a governmental authority in a jurisdiction outside this state that

qualifies the individual to perform the acts authorized under a certification of registration as an athlete agent.

(b) The individual is in good standing with the governmental authorities in every jurisdiction outside this state that have granted the individual a license, certification, registration, or permit that qualifies the individual to perform acts authorized under a certification of registration as an athlete agent.

SPS 151.07 Renewal.

(1) An athlete agent registered under ss. SPS 151.02, 151.04, or 151.06 may renew a certificate of registration by submitting a completed renewal application form provided by the department and the fee required under s. 440.03 (9) (a), Stats.

(2) An athlete agent registered under s. SPS 151.06 may renew a certificate of registration by submitting all the following:

(a) A copy of the application for renewal in the other state.

(b) A copy of the renewed certificate of registration from the other state.

(c) The fee required under s. 440.03 (9) (a), Stats.

(3) An athlete agent registered under s. SPS 151.04 may renew a certificate of registration by submitting the documentation required in sub. (2), and if the following are true:

(a) The application and registration requirements of the other state are substantially similar to or more restrictive than the requirements for registration under s. 440.992, Stats.

(b) The registration of the other state has not been revoked or suspended and no action involving the individual's conduct as an athlete agent is pending against the individual or the individual's registration in any state.

SECTION 9. Chapter SPS 152 and 153 are repealed.

SECTION 10. SPS 154.01 (4g) and (4r) are created to read:

SPS 154.01 (4g) If convicted of a crime in this or another state, failing to submit to the department within 30 days a copy of the complaint or other information which describes the nature of the crime and the judgment of conviction.

(4r) If the subject of an administrative, judicial, or other governing body determination or sanction, failing to submit to the department within 30 days a copy of the final judgment if any of the following are true:

(a) A determination has been made that the athlete agent has made a false, misleading, deceptive or fraudulent representation.

(b) A determination that the conduct of the athlete agent resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student athlete or educational institution.

(c) Any sanction, suspension, or disciplinary action is being taken against the athlete agent arising out of occupational or professional conduct.

SECTION 11. SPS 154.01 (7) is repealed.

SECTION 12. SPS 154.01 (12), (13) and (14) are created to read:

SPS 154.01 (12) Knowingly aiding, assisting, or advising in the unlawful practice of an athlete agent.

(13) Engaging in the practice as an athlete agent without a certificate of registration except as provided in s. 440.991 (2), Stats.

(14) Violating any of the provisions of ss. 440.994, 440.9945, 440.995, 440.9955, or 440.996, Stats.

SECTION 13. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)
