

HOUSE BILL REPORT

SSB 6281

As Reported by House Committee On:
Business & Financial Services

Title: An act relating to athlete agents.

Brief Description: Enacting amendments to the uniform athlete agents act.

Sponsors: Senate Committee on Commerce & Labor (originally sponsored by Senators Fain, Pedersen, Baumgartner and Frockt; by request of Uniform Law Commission).

Brief History:

Committee Activity:

Business & Financial Services: 2/16/16, 2/23/16 [DP].

Brief Summary of Substitute Bill

- Updates the Uniform Athlete Agents Act to reflect recent changes to the model act.

HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

Majority Report: Do pass. Signed by 11 members: Representatives Kirby, Chair; Stanford, Vice Chair; Vick, Ranking Minority Member; McCabe, Assistant Ranking Minority Member; Barkis, Blake, Dye, Hurst, Kochmar, Ryu and Santos.

Staff: Peter Clodfelter (786-7127).

Background:

Washington's Uniform Athlete Agents Act (UAAA) is based on a model act produced by the National Conference of Commissioners on Uniform State Laws. The model act was drafted in 2000 and Washington enacted the UAAA in 2002. Forty-two other states have enacted the original model act. The UAAA governs relationships among student athletes, athlete agents, and educational institutions.

In 2015 the National Conference of Commissioners on Uniform State Laws revised the model act and made changes like expanding the definition of "athlete agent," allowing for

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increased reciprocal registration between states, adding new requirements to disclosure statements, and expanding notification requirements.

Definition of "Athlete Agent" and "Agency Contract."

An "athlete agent" is an individual who enters into an agency contract with a student athlete or, directly or indirectly, recruits or solicits a student athlete to enter into an agency contract. Specifically excluded from the definition of athlete agent is a spouse, parent, sibling, grandparent, or legal guardian of the student athlete or an individual acting solely on behalf of a professional sports team or professional sports organization.

An "agency contract" is an agreement in which a student athlete authorizes a person to negotiate or solicit a professional-sports-services contract or an endorsement on behalf of the student athlete.

Disclosure Form.

An individual may generally not act as an athlete agent in the State of Washington unless on the day of initial contact with a student athlete the athlete agent delivers to the student athlete a disclosure form. A disclosure form must contain, among other information, the following:

- any business or occupation engaged in by the athlete agent in the previous five years;
- a description of the athlete agent's: (1) formal training as an athlete agent; (2) practical experience as an athlete agent; and (3) educational background relating to the athlete agent's activities as an athlete agent;
- the names and addresses of three individuals not related to the athlete agent who are willing to serve as references;
- the name, sport, and last known team for each individual for whom the athlete agent provided services as an athlete agent during the previous five years;
- the name and address of any person who is a partner, officer, associate, or profit sharer of the business, if the business is not a corporation;
- the name and address of any person who is an officer or director and any shareholder of the business with at least a 5-percent interest, if the business is a corporation;
- whether the athlete agent or any other person associated with the athlete agent's business who is required to be named in the disclosure form has been convicted of a crime that, if committed in Washington, would be a felony or other crime involving moral turpitude, and, if so, the identity of the crime;
- whether there has been any administrative or judicial determination that the athlete agent or any other person associated with the athlete agent's business who is required to be named in the disclosure form has made a false, misleading, deceptive, or fraudulent representation;
- any instance in which the conduct of the athlete agent or any other person associated with the athlete agent's business who is required to be named in the disclosure form 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; and
- any sanction, suspension, or disciplinary action taken against the athlete agent or any other person associated with the athlete agent's business who is required to be named in the disclosure form arising out of occupational or professional conduct.

Instead of submitting the disclosure form to the student athlete, an individual who has submitted an application for and received a certificate of or a renewal of a certificate of registration or licensure as an athlete agent in another state may submit to the student athlete a copy of the application and a valid certificate of registration or licensure from the other state, but only if the application to the other state meets the following requirements: (1) the application was submitted in the other state within the previous six months and the athlete agent certifies the information contained in the application is current; (2) the application contains information substantially similar to or more comprehensive than the information required in the disclosure form in Washington; and (3) the athlete agent signed the application under penalty of perjury.

Agency Contract Requirements.

An agency contract between a student athlete and an athlete must be in a record signed by the parties. Additionally, in close proximity to the student athlete's signature, an agency contract must contain a conspicuous notice in boldface type and in capital letters providing a warning to the student athlete that if the student athlete signs the contract, the student athlete may lose eligibility to compete as a student athlete in the student athlete's sport, that both the student athlete and the athlete agent are required to notify the student athlete's athletic director prior to entering into an agency contract and after entering into an agency contract, and that the student athlete may cancel the contract within 14 days after signing it, although cancellation may not reinstate the student athlete's eligibility.

A copy of the disclosure form that the athlete agent delivered to the student athlete must be attached to the agency contract. An agency contract failing to comply with the UAAA's requirements is voidable by the student athlete. The athlete agent must give a copy of the signed agency contract to the student athlete at the time of signing.

Required Notices by Athlete Agents and Student Athletes to Educational Institutions.

At least 72 hours prior to entering into an agency contract, and again within 72 hours of entering the contract or before the next scheduled athletic event in which the student athlete may participate, whichever occurs first, the athlete agent and student athlete must give notice in a record of the existence of the contract and must provide a copy of the disclosure form to the athletic director of the educational institution at which the student athlete is enrolled or the athlete agent has reasonable grounds to believe the student athlete intends to enroll.

People Prohibited from Engaging in the Business of an Athlete Agent.

No person may engage in the business of an athlete agent who has: (1) been convicted of a crime that, if committed in Washington, would be a felony or other crime involving moral turpitude; (2) made a materially false, misleading, deceptive, or fraudulent representation as an athlete agent or in the application for licensure or registration as an athlete agent in another state; (3) engaged in conduct expressly prohibited by the UAAA; (4) had a registration or licensure as an athlete agent suspended, revoked, or denied or been refused renewal of registration or licensure in any state; or (5) engaged in conduct or failed to engage in conduct that resulted in a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event that was imposed on a student athlete or educational institution.

Action for Damages.

An educational institution has a right of action against an athlete agent or a former student athlete for damages caused by a violation of the UAAA. In an action brought under the UAAA, the court may award to the prevailing party costs and reasonable attorneys' fees. Damages of an educational institution under the UAAA include losses and expenses incurred because, as a result of the activities of an athlete agent or former student athlete, an educational institution was injured by a violation of the UAAA or was penalized, disqualified, or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by reasonable self-imposed disciplinary action taken to mitigate sanctions.

Summary of Bill:

Washington's UAAA is amended to reflect the recent updates to the model act.

Amended Definition of "Athlete Agent" and New Definitions.

The definition of "athlete agent" is expanded and elaborated upon. The express exclusion of spouses, parents, siblings, grandparents, and legal guardians of student athletes is eliminated from the definition of athlete agent. New definitions are provided for previously undefined words and terms such as "educational institution," "enrolled," "interscholastic sport," "licensed, certified, or registered professional," "recruit or solicit," and "sign."

Disclosure Form.

Additional information must be included in the disclosure form. This additional required information includes:

- each social media account that the athlete agent or the agent's business or employer is affiliated with;
- history of self-employment and employment by others within the previous five years, including any professional or occupational license, registration, or certification held by the agent during that five years;
- the name of the parent or guardian of each student athlete who is a minor and who the athlete agent acted as an athlete agent on behalf of within the last five years;
- the names and addresses of each person who is a member or manager, or who directly or indirectly holds an equity interest of at least 5 percent of the athlete agent's business, if the business is not a corporation; and
- whether the athlete agent or other person associated with the athlete agent's business who is required to be named in the disclosure form has done any of the following: (1) pled guilty or no contest to, or has charges pending for, a felony or other crime involving moral turpitude; (2) been a respondent in a civil proceeding, within the previous 15 years, including a proceeding seeking an adjudication of legal incompetence; (3) has an unsatisfied judgment or a judgment of continuing effect, including maintenance or a child support order that is not current; (4) has been adjudicated bankrupt or was an owner of a business that was adjudicated bankrupt; or (5) abandoned registration as an athlete agent in any state.

The requirement that athlete agent applicants include the names and addresses of three people not related to the athlete agent who are willing to serve as references is eliminated.

A person who is registered or licensed as an athlete agent in another state may deliver to a student athlete on the day of initial contact with the student athlete, instead of the disclosure form that is otherwise required, the following documents: (1) a copy of the application for registration or licensure in the other state; (2) a statement that identifies any material change in the information on the application or verifies there is no material change in the information, signed under penalty of perjury; and (3) a copy of the valid certificate of registration or licensure from the other state. The requirements that the application for registration or licensure in the other state be within the previous six months and the application contain information substantially similar to or more comprehensive than required in Washington is eliminated.

Agency Contract Requirements.

If a student athlete is a minor, an agency contract must be signed by the parent or guardian of the minor and the mandatory conspicuous notice must be revised stylistically to reflect that the parent or guardian is acting on behalf of the minor. Stylistic changes and clarifications are made to the conspicuous notice that must be included in athlete agent contracts.

The requirement that the disclosure form delivered to the student athlete on the day of initial contact with the student athlete must be attached to the agency contract is eliminated. Added is a requirement that an agency contract must be accompanied by a separate record signed by the student athlete or, if the student athlete is a minor, the parent or guardian of the athlete, acknowledging that signing the contract may result in the loss of the student athlete's eligibility to participate in the student athlete's sport. A copy of this separate signed record must be given to the student athlete or the parent or guardian of the athlete, as appropriate, in addition to a copy of the contract.

If an agency contract is voided for failure to comply with the contract form requirements, any consideration that is received by a student athlete or parent or guardian of the athlete from the athlete agent under the contract may be retained. A parent or guardian of a student athlete who is a minor may cancel an agency contract, just like a student athlete who is not a minor may do. Additionally, a parent or guardian of a student athlete may not waive the right to cancel an agency contract, just like a student athlete who is not a minor may not do.

Required Notices by Athlete Agents and Student Athletes to Educational Institutions.

The requirement that an athlete agent and a student athlete provide a copy of the disclosure form to the athletic director is eliminated, although the athlete agent and student athlete must still give notice to the athletic director in a record of the existence of the contract both before and after the contract is entered. Added is a requirement that a student athlete must provide to the athletic director the name and contact information of the athlete agent.

The scope of required notifications is expanded. If an athlete agent has a relationship with a student athlete before the athlete enrolls in an educational institution and receives an athletic scholarship from the educational institution, the athlete agent must generally notify the institution of the relationship not later than 10 days after the enrollment.

Additionally, an athlete agent must give notice in a record to the athletic director of an educational institution at which a student athlete is enrolled before the athlete agent or another person on the athlete agent's behalf communicates or attempts to communicate with the student athlete or the student athlete's parent or guardian, if the student athlete is a minor, to influence the student athlete to enter into an agency contract.

Further, if a communication or attempt to communicate with an athlete agent is initiated by a student athlete or another person on behalf of the student athlete then, within 10 days, the athlete agent must notify in a record the athletic director of any educational institution at which the student athlete is enrolled. An educational institution that becomes aware of an athlete agent's violation of the UAAA must notify any professional league or players association with which the institution is aware the athlete agent is licensed or registered of the existence of the violation.

People Prohibited from Engaging in the Business of an Athlete Agent.

The criminal history that disqualifies an applicant is expanded. A person who has pled no contest to or who has charges pending for a felony or other crime involving moral turpitude may not engage in the business of an athlete agent. Further, disqualifying conduct is expanded to also include conduct by an applicant resulting in the imposition of a sanction, suspension, or declaration of ineligibility to participate in a professional athletic event on a student athlete.

Action for Damages.

A student athlete may bring an action for damages against an athlete agent for a violation of the UAAA, just like an educational institution may currently do. The authorization for an educational institution to bring an action against a former student athlete for damages caused by a violation of the UAAA is removed. The specific examples of what constitutes recoverable damages by an educational institution for a violation of the UAAA are removed. An educational institution or student athlete plaintiff that prevails in an action brought under the UAAA may recover actual damages, costs, and reasonable attorneys' fees. An athlete agent found liable forfeits any right of payment for anything of benefit or value provided to the student athlete and must refund any consideration paid to the athlete agent by or on behalf of the student athlete.

Miscellaneous Changes.

A violation of the UAAA is made a violation of the state Consumer Protection Act.

References to the parents or guardians of student athletes are added so that when an athlete agent is prohibited from taking action directed at a student athlete, such action is also prohibited when directed at the parent or guardian of a student athlete who is a minor.

Language is added so that the signature requirements pertaining to athlete agents in the UAAA are consistent with the federal Electronic Signatures in Global and National Commerce Act.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Washington State University and the University of Washington believe this is a solid refinement of the existing UAAA, and would be beneficial to college athletics. The changes made to the UAAA in the bill would codify existing practices. Also, new definitions are provided. All changes are compliant with National Collegiate Athletic Association (NCAA) regulations, although no current NCAA regulations require positive action by the Legislature. The landscape is fluid on the national level, and future updates may be required. All college students currently receive financial literacy training as part of student orientation.

(Opposed) None.

Persons Testifying: Chris Mulick, Washington State University; and Genesee Adkins, University of Washington.

Persons Signed In To Testify But Not Testifying: None.