

MEMORANDUM
UAAA ISSUES
DRAFTING COMMITTEE
NOVEMBER 2014

I. Background

With the immense amount of money at stake for a wide variety of professional athletes and those who represent them, the commercial marketplace in which athlete agents operate is extremely competitive. While seeking to best position one's clients and to maximize their potential income is both legal and good business practice, the recruitment of a student-athlete while he or she is still enrolled in an educational institution can and will cause substantial eligibility problems for both the student and the school, which can in turn lead to severe economic sanctions and loss of scholarships for the institution. The problem becomes even more acute where an unscrupulous agent misleads a student, especially where the athlete is not aware of the implications of signing the agency agreement or where agency is established without notice to the athletic director of the school. In response to these issues and at the urging of the National Collegiate Athletic Association (NCAA), the Uniform Athlete Agents Act (UAAA) was promulgated by the Uniform Law Commission (ULC) in 2000.

In general, the UAAA did the following:

- Defined athlete agent and set the scope of the act to apply narrowly to the conduct of directly or indirectly inducing or attempting to induce a student-athlete into an agency contract. However, the act applied broadly to any type of individual that engages in such conduct.
- Defined student-athlete as an individual who “engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport.” Under that definition, high school students were clearly student-athletes because the individual may be eligible in the future to engage in intercollegiate athletics.
- Except under limited and temporary circumstances, prohibited an individual from acting as an athlete agent without registering in the state. The act provided for a uniform registration system and criminal history disclosures, including required disclosure of his or her training, experience, and education, whether he or she or an associate has been convicted of a felony or crime of moral turpitude, has been administratively or judicially determined to have made false or deceptive representations, has had his or her agent's license denied, suspended, or

revoked in any state, or has been the subject or cause of any sanction, suspension, or declaration of ineligibility.

- Required agents to maintain executed contracts and other specified records for a period of five years, including information about represented individuals and recruitment expenditures, which are open to inspection by the state.
- Allowed agents who are issued a valid certificate of registration or licensure in one state to cross-file that application (or a renewal thereof) in all other states that have adopted the act.
- Provided student-athletes with a statutory right to cancel an agency contract within 14 days after the contract is signed without penalty.
- Required athlete-agent contracts subject to the act to disclose the amount and method of calculating the agent's compensation, the name of any unregistered person receiving compensation because the athlete signed the agreement, a description of reimbursable expenses and services to be provided, as well as warnings disclosing the cancellation and notice requirements imposed under the act.
- Required both the agent and the student-athlete to give notice of the contract to the athletic director of the affected educational institution within 72 hours of signing the agreement, or before the athlete's next scheduled athletic event, whichever occurs first. Where applicable, the agent must provide this notice to a school where he or she has reasonable grounds to believe the athlete intends to enroll.
- Provided educational institutions with a statutory right of action against an athlete agent or former student-athlete (several, but not joint, liability) for damages, including losses and expenses incurred as a result of the educational institution being penalized, disqualified, or suspended from participation by an athletics association or conference, or as a result of reasonable self-imposed disciplinary actions taken to mitigate sanctions, as well as costs and reasonable attorney's fees. The act also preserved any remedy the student-athlete may have against the agent for loss of eligibility, etc.
- Prohibited agents from providing materially false or misleading information, promises or representations, with the intent of inducing a student-athlete to enter into an agency contract. The act also prohibited furnishing anything of value to a student-athlete or another person before that athlete enters into an agency contract. The act provided that an athlete agent may not intentionally initiate contact with a student-athlete unless registered under the act, and may not refuse or willfully fail to retain or permit inspection of required records, fail to register where required, provide materially false or misleading information in an application for registration or renewal thereof, predate or postdate an agency contract, or fail to notify a student-athlete (prior to signing) that signing an agency

contract may make the student-athlete ineligible to participate as a student-athlete in that sport. The act imposed criminal penalties for violations of these prohibitions.

II. PROPOSED AMENDMENTS PRESENTED TO THE 2014 ANNUAL MEETING

The substantive amendments to the UAAA proposed by the drafting committee revised the definitions of athlete agent and student athlete, required reciprocal licensing, including attempting to have a common form, encouraged a central licensing process, required certain notices to be given to educational institutions, and revised the civil remedies available for damages resulting from a violation of the act.

A. ATHLETE AGENT.

The proposed amendment of the definition of athlete agent retained the language of the UAAA which makes an individual who directly or indirectly recruits or solicits a student athlete to enter an agency contract an athlete agent, but expanded the definition to include an individual who, for compensation:

- (1) procures or attempts to procure employment for a student athlete as a professional athlete;
- (2) represents a student athlete as an athlete;
- (3) advises a student athlete on finances, business ventures, or career management;
- (4) manages the business affairs of a student athlete; or
- (5) secures the enrollment of a student athlete at a particular institution.

The term does not include a licensed professional acting within the scope of his or her license unless the individual also recruits or solicits a student athlete to enter an agency contract or is an individual who, for compensation, procures or attempts to procure employment of a student athlete as a professional athlete.

Recruit or solicit, which is used in the definition of athlete agent, is defined to mean attempting to influence the choice of an athlete agent by a student athlete or, if the athlete is a minor, by a parent or guardian of the athlete.

The UAAA excluded a spouse, parent, sibling, grandparent, or guardian of a student athlete from the definition of athlete agent. The act was also silent on the issue of coaches and student athletes. The definition of recruit or solicit excludes advice to select a particular athlete agent given in a family, coaching, or social situation unless the advice is given because of the receipt or anticipated receipt of compensation from the agent. Thus, the parent of a student athlete who advises the athlete to select a particular agent is not an athlete agent unless the advice is given in exchange for compensation or the expectation of compensation from the agent.

Similarly, a coach of a student athlete who advises the athlete to select a particular agent is not an agent unless the advice is given for compensation or the expectation of compensation from the agent.

B. STUDENT ATHLETE.

Athlete agents are providing benefits to students as early as elementary school if the student appears to have long-term professional sports capability. For example, agents have been known to provide athletic shoes and other athletic equipment to student athletes at an early age. This could cause the student athlete to lose his or her eligibility to participate in intercollegiate sports. Accordingly, a definition of educational institution is added and the definition of student athlete is revised to make clear that the act applies to a student athlete enrolled at any level of public or private education.

C. RECIPROCAL REGISTRATION.

Section 5 of the UAAA was not a true reciprocal registration provision in that, while it allowed for submission of the application for registration in one state to another state, the second state was free to require additional information or refuse to issue the registration on various grounds. The amended version is a true reciprocal registration provision in that if an individual registered in state A applies for registration in state B, state B is required to grant the registration if it determines the law in state A is the same or more restrictive than the law in state B, the registration is in good standing, and no proceeding involving the individual's conduct as an athlete agent is pending in any state in which the individual is registered.

D. CENTRAL REGISTRATION.

A central registration point with a single form is the easiest way to facilitate the reciprocal licensing provisions of Section 5 (b) and Section 5 (c) encourages the administrative agencies to which the enforcement of the act is delegated to cooperate with agencies from other states to that end. It is recognized there are substantial obstacles to a central registration office, not the least of which is cost. If it is not possible or feasible to create a central registration point, agencies are encouraged to adopt a standard form set forth in the comments.

E. NOTIFICATION OF EDUCATIONAL INSTITUTIONS.

Section 14 (d) imposes a requirement an athlete agent notify the educational institution in a record before attempting to communicate with a student athlete enrolled at the institution. This provision is one the institutions feel is crucial to trying to control the excesses in the process.

F. CIVIL REMEDIES.

Section 16 of the UAAA provided a cause of action for an educational institution against an athlete agent or a student athlete for damages caused by a violation of the act. The amended

section, which is based on Section 18897.8 of the California Business and Professions Code, removes the cause of action against a student athlete and gives the student athlete a cause of action against the athlete agent.

III. DIFFERENCE BETWEEN ANNUAL MEETING AND NOVEMBER DRAFTS

A. DEFINITION OF ATHLETE AGENT

The definition of athlete agent in the annual meeting draft included individuals who, for compensation, provide financial, business, or career counseling services to student athletes. The November committee draft excludes individuals providing those services exclusively as an employee of an educational institution for the benefit of the institution.

The definition of athlete agent in the annual meeting draft did not include licensed professionals providing services within the scope of the license except those who also recruit or solicit a student athlete to enter an agency contract or, for compensation, procure or offer to obtain employment of the student athlete as a professional athlete or a member of a professional sports team or organization. The November committee draft also excepts an individual who provides the professional service on a compensation basis for the student athlete different from that for service provided to an individual who is not a student athlete.

B. REQUIREMENT FOR APPLICATION FOR REGISTRATION

The requirements for application for registration under Section 5(b) are revised to add a requirement that when an individual is registering based on a registration in another state, the individual must include a statement that there is no material change in the application from the other state or identifying any material change in the information, signed under penalty of perjury.

There is an alternative for the committee to consider, one that would create a central registration entity among the states that adopt the alternative by means of an interstate compact. The substantive provisions of the draft on the contents of the application and the basis for denial would be the same.

C. SUGGESTIONS FROM THE FLOOR.

The following suggestions from the floor were included, as well:

(1) Section 2(2)(A)(i), definition of athlete agent was revised to delete “with a” and insert “as a member of a” before “professional sports team or organization” at the end of subparagraph to make clear it is employment as an athlete that triggers the definition.

(2) Section 2(2)(A)(ii), definition of athlete agent, was revised to add “or the anticipation of future compensation” in first line.

(3) Section 2(2)(A)(II), definition of athlete agent, was revised to add “, unless the individual is an employee of the institution acting exclusively for the benefit of the institution” to make it clear career counselors employed by educational institutions were not agents.

(4) Section 2(2), definition of athlete agent, was revised to specifically include accountants as a profession in Section 2(2)(B)(ii).

(5) Section 2(2), definition of athlete agent, was revised to expand the professions excluded in Section 2(2)(B)(ii) from individuals licensed to individuals licensed, registered, or certified.

(6) Section 2(5), definition of educational institution, was revised to add “college” after community college.

(7) Section 2(8), definition of interscholastic sport, was revised to add “college” after community college.

(8) Section 5(a)(10), contents of application for registration, was revised to add “or respondent” in second line.

(9) Section 6, issuance, denial, or renewal of registration, was revised to add bracketed subsection (g) to reflect the fact that it deals with denial rather than renewal, which is covered by bracketed (c) of Section 7.

(10) Section 7, suspension, revocation, or refusal to renew registration, was revised to delete “deny” in bracketed subsection (c) to reflect addition of bracketed (g) of Section 6.

(11) Section 11(b), was revised to add “scheduled” before athletic event to be parallel with subsection (a).

(12) Section 14(d), was revised to add in third line “have that individual” between “individual” and “influence” to make it clear that communication requiring notice was with an individual who was going to communicate with the student athlete.

(13) Section 14(f) was added to require an educational institution to notify the registration agency when it becomes aware of a violation of the act by an athlete agent.

D. COMMITTEE ON STYLE SUGGESTIONS

The November draft includes nonsubstantive changes suggested by the Committee on Style.

IV. ISSUES FOR NOVEMBER DRAFTING COMMITTEE

A. GENERAL

(1) Criminal penalties.

The most discussed provision in the UAAA at the annual meeting was the section dealing with criminal penalties. Many commissioners wanted the section removed from the UAAA. The chair advised the Committee of the Whole that the section would be reviewed at the fall meeting. Attached is a chart prepared by the Chicago office that shows 38 of the 42 states that have enacted the UAAA have civil penalties and of the 42, 22 have felony or felony and misdemeanor provisions, and 35 have misdemeanor provisions. There does not appear to be any state that has only civil penalties.

(2) Registration and civil enforcement by interstate compact.

On May 7, 2014, the Interstate Compact Subcommittee met to discuss whether an interstate compact should be used to create a central registry that member states could use for registration and enforcement under the UAAA. The subcommittee recommended that a study committee be created to study the issue or, in the alternative, that the drafting committee draft interstate compact language that would be bracketed so that states could create the compact as part of amending the UAAA. The chair and reporter decided this could be done in the context of amending the UAAA and have drafted two Alternatives for Sections 5, 6, 7, 8, and 9. Alternative A is the annual meeting draft as revised to reflect floor comments and Committee on Style changes. It establishes a registration system in the adopting state that requires the adopting state to register an individual who is registered in another state if the adopting state determines the law of the other state is substantially similar to or more restrictive than the law of the adopting state, registration in the other state has not been revoked or suspended, and no action involving the agent's conduct as an agent is pending. Alternative B creates a central registration agency and provides that states adopting Alternative B are entering into an interstate compact with other states that adopt it. While the numbering of the sections in the two Alternatives is different because Section 5 of Alternative B creates the commission and the contents of Section 9 are folded into Section 5, the substantive requirements for the initial registration and the basis for denial of registration or the suspension, revocation, or failure to renew registration are identical in both Alternatives. Thus, the effect of Alternative B in a state adopting the compact is to delegate the responsibility for the registration of athlete agents and the civil enforcement of the act to a central entity created by the compact. States adopting Alternative B will also have to amend Section 2 to include a definition of commission for the new central registration agency, add a section containing language formally creating the Interstate Compact, make conforming changes replacing [Secretary of State] with the commission in Sections 3 and 17, and additional conforming changes in Section 4.

(3) Civil damages. Should an athlete agent be liable for punitive damages, treble damages, or enhanced damages when student athlete is a minor?

(4) How can enforcement be incentivized?

Only 19 of the 42 jurisdictions have brought enforcement actions under the UAAA. Anecdotal evidence suggests that the UAAA is widely ignored by those who should be registered under the act. See attached “The List: A Collection of Allegations, Reprimands, Suspensions against Athlete-Agents (with commentary) prepared by John M. Phillips. The draft includes a requirement that an educational institution notify the registration agency of a violation of Section 14 when it becomes aware of it. Should the enforcing agency also be required to post a list on line of agents that have registered and any disciplinary action taken against those agents? Should there be a mechanism where professional leagues and player associations, such as the NFL and the NFLPA, post on line information on agents representing student athletes and require proof that they were registered at the time the student athlete was signed by the agent?

Should we include a “whistle blower” provision that would grant a reward to any person reporting a violation that results in a civil or criminal penalty?

(5) Should the committee request a change in committee’s charge to a revision of the UAAA rather than amendments to the UAAA?

B. SPECIFIC ISSUES

(1) Section 2(2) Definition of athlete agent.

The definition is so broad that it arguably includes unions. Do we wish to exclude unions? [Willborn, Nebraska]

The Cam Newton language in (2)(A)(iii) excludes individuals who are employees of the institution working exclusively for the benefit of the institution. Do we want to include individuals who perform the same service as an independent contractor or volunteer?

(2) Section 5. Should any changes on an application from another state be required to be updated periodically? [Burnett, Maryland] Do Section 5 and the Form in the Comments line up?

(3) Section 7. Can Secretary of State take emergency action without notice and hearing?

(4) Section 11. Subsections (b) and (c), what is meant by enrolled and enrolls?

(5) Section 14. Is there a difference between contacting versus communicating or attempting to communicate? In subsection (d), do we want to require an agent who did not initiate communication to notify?

(6) Section 15. Violation of act or Section 14?

(7) Section 16. Is admitted to or enrolled in language necessary?