

AMENDMENTS TO REVISED UNIFORM ATHLETE AGENTS ACT (2015)

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
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WITH PREFATORY NOTE AND COMMENTS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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The **Uniform Law Commission** (ULC), also known as National Conference of Commissioners on Uniform State Laws (NCCUSL), now in its 128th year, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.

ULC members must be lawyers, qualified to practice law. They are practicing lawyers, judges, legislators and legislative staff and law professors, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical.

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Prefatory Note

In September 2017, the FBI arrested ten individuals related to a college basketball corruption scandal, including four assistant college basketball coaches and the director of global marketing for Adidas. At the heart of the scandal are the government's allegations that representatives from Adidas promised six-figure payments to players' families in exchange for the players' commitments to schools sponsored by the shoe company in violation of federal law. In addition, the government alleged that coaches steered players to financial advisors in anticipation that the players would have lucrative careers in the NBA. So far, two of the individuals have been convicted on some of the indictments against them.

As a result of these indictments, the NCAA Board of Governors, Division I Board of Directors, and NCAA President established the Commission on College Basketball (Rice Commission), chaired by Dr. Condoleezza Rice, "to fully examine critical aspects of Division I men's basketball." In April 2018, the Rice Commission made its recommendations to the NCAA which were implemented in August 2018.

The Rice Commission examined the effects of the "one-and-done rule" which requires elite basketball players coming out of high school to play one year of collegiate basketball before being eligible for the NBA draft.

The Rice Commission recommended "that high school and college players who declare for the draft and are not drafted remain eligible for college basketball unless and until they sign a professional contract. Specifically, players who are not drafted should be permitted to change their minds and attend college or return to college, provided they remain academically and otherwise eligible."

In making its recommendations, the Rice Commission observed, "Elite high school and college basketball players tend to misjudge their professional prospects. Players who think they are surefire professionals are often mistaken. The numbers tell this story: Only a very small percentage of NCAA men's basketball players make it to the NBA (around 1.2%), let alone have successful careers. Yet, an NCAA Survey we commissioned showed that 59% of Division I players believe that they will play professionally, and NCAA research suggests that 76% of Division I players, 48% of Division II players, and 21% of Division III players believe that they have a chance to play at the next level. Erroneously entering the NBA draft is not the kind of misjudgment that should deprive student-athletes of the valuable opportunity to enter college or to continue in college while playing basketball."¹

As a result of the Rice Commission's recommendations, the NCAA made changes to its bylaws which apply only to student-athletes playing basketball. These changes provide student-athletes playing basketball more freedom and flexibility to decide whether going pro is the right choice

¹ Report and Recommendations to Address the Issues Facing Collegiate Basketball by the Commission on College Basketball, April 2018, pp 4-5, https://www.ncaa.org/sites/default/files/2018CCBReportFinal_web_20180501.pdf.

for them and allow those who are not drafted by the NBA or a professional league other than the NBA to return to college and finish their degree. The changes minimize the leverage of harmful outside influences on high school recruits and college student-athletes. In addition, these changes make the NCAA investigations and infractions process more efficient and binding and set stronger penalties for schools and individuals who break the rules. The changes went into effect on August 1, 2019.² In making these changes to its bylaws, the NCAA provided the following rationale:

“Elite high school prospective student-athletes and college student-athletes need earlier professional advice to determine whether it is in their best interests to declare for the NBA draft or whether college basketball offers a superior pathway. Although current NCAA rules allow the retention of lawyers and advisors to provide professional advice at market value, such individuals are not permitted to engage in representational activities without jeopardizing the athlete's eligibility. High school and college athletes and their families are eager for knowledge about their professional options and the evidence suggests they will find that information one way or another. Unfortunately, such athletes and their families also often misunderstand the athlete's true professional potential. Many stakeholders voiced their belief to the Commission on College Basketball that agents are already interacting with elite high school prospective student-athletes and collegiate student-athletes, often in violation of NCAA and institutional rules. They argue that a prospective student-athlete or current student-athlete who is a legitimate candidate to participate as a professional player should have the opportunity to meet with and be represented by an NCAA-certified agent without losing eligibility. An NCAA certification process for agents, with established standards of behavior and strict consequences for violations of such standards, will ensure that the potential professionals have access to important and necessary information in a more transparent environment. Finally, the proposal, as it relates to elite senior high school prospective student-athletes, is only necessary and applicable if the NBA and National Basketball Players Association agree, as part of the collective bargaining process, to permit 18-year-olds to be eligible for the NBA draft.”³

The bylaws amendments were approved by the NCAA on August 8, 2018. The amendments allowed for payments by sports agents to student-athletes and family members⁴ for meals, hotel, and travel in connection with recruiting and signing the student-athlete as a client. These payments would violate the criminal provisions found in Section 14 in the 41 states that have adopted UAAA and the 14 states that have adopted RUAAA. Under either act, any benefit given

² NCAA Division I Manual, <https://web3.ncaa.org/lstdbi/reports/getReport/90008> (Effective August 1, 2019).

³ NCAA Bylaws Amendments adopted August 8, 2018, http://www.ncaa.org/sites/default/files/2018-19DIGov_EffectiveImmediatelyApplicationAfter2018_19Season_20180813.pdf.

⁴ “Family member” is defined in NCAA Bylaw 12.02.4 as “an individual with any of the following relationships to the prospective student-athlete: spouse, parent or legal guardian, child, sibling, grandparent, domestic partner or any individual whose close association with the prospective student-athlete is the practical equivalent of a family relationship.”

to a student-athlete prior to signing an agency contract is prohibited as long as the student-athlete is still eligible to play in his/her collegiate sport and acceptance of those benefits may cause the student athlete to lose his/her eligibility.

In 2019, the ULC amended Section 14 of the RUAAA to accommodate the NCAA bylaws amendments. Though the changes to the NCAA bylaws are limited to student athletes playing basketball, the ULC did not limit the amendment in the same manner. The 2019 RUAAA amendment accommodates the 2018 changes to NCAA bylaws and will accommodate future changes by associations of educational institutions governing interscholastic or intercollegiate sports to rules or bylaws governing student athletes.

AMENDMENTS TO REVISED UNIFORM ATHLETE AGENTS ACT (2015)

SECTION 14. PROHIBITED CONDUCT. ~~(a) An athlete agent, with the intent to influence a student athlete or, if the athlete is a minor, a parent or guardian of the athlete to enter into an agency contract, may not take intentionally any of the following actions or encourage any other individual to take or assist any other individual in taking any of the following actions on behalf of the agent:~~

(1) ~~give a student athlete or, if the athlete is a minor, a parent or [guardian] of the athlete materially false or misleading information or make a materially false promise or representation with the intent to influence the athlete, parent, or [guardian] to enter into an agency contract;~~

(2) ~~furnish anything of value to the athlete~~ a student athlete or another individual, if to do so may result in loss of the athlete's eligibility to participate in the athlete's sport, unless: before the athlete enters into the contract; or

(3) ~~furnish anything of value to an individual other than the athlete or another registered athlete agent.~~

(A) the agent notifies the athletic director of the educational institution at which the athlete is enrolled or at which the agent has reasonable grounds to believe the athlete intends to enroll, not later than 72 hours after giving the thing of value; and

(B) the athlete or, if the athlete is a minor, a parent or [guardian] of the athlete acknowledges to the agent in a record that receipt of the thing of value may result in loss of the athlete's eligibility to participate in the athlete's sport;-

~~(b) An athlete agent may not intentionally do any of the following or encourage any other individual to do any of the following on behalf of the agent:~~

~~(1)~~(3) initiate contact, directly or indirectly, with a student athlete or, if the athlete is a

minor, a parent or ~~guardian~~ [guardian] of the athlete, to recruit or solicit the athlete, parent, or ~~guardian~~ [guardian] to enter an agency contract unless registered under this [act];

~~(2)~~(4) fail to create, ~~or~~ retain, or ~~to~~ permit inspection of the records required by Section 13;

~~(3)~~(5) fail to register when required by Section 4;

~~(4)~~(6) provide materially false or misleading information in an application for registration or renewal of registration;

~~(5)~~(7) predate or postdate an agency contract; ~~or~~

~~(6)~~(8) fail to notify a student athlete or, if the athlete is a minor, a parent or ~~guardian~~ [guardian] of the athlete, before the athlete, parent, or ~~guardian~~ [guardian] signs an agency contract for a particular sport that the signing may ~~make the athlete ineligible~~ result in loss of the athlete's eligibility to participate as a student athlete in that in the athlete's sport;

(9) encourage another individual to do any of the acts described in paragraphs (1) through (8) on behalf of the agent; or

(10) encourage another individual to assist any other individual in doing any of the acts described in paragraphs (1) through (8) on behalf of the agent.

Legislative Note: *If a state uses a different term to describe the relationship of guardian, the bracketed term "guardian" should be changed to the appropriate term in this section and in Section 2(15); Section 5(a)(6); Section 10(d), (e), (f), and (g); Section 11(f)(1) and (2); and Section 12(a), (b), and (c).*

Comment

The revision of Section 14 is intended to deal with changes made to NCAA eligibility rules following the indictment of certain agents, representatives of shoe companies, and basketball coaches in 2017. The new rules are limited to a limited number of student athletes whose sport is basketball. They allow an agent certified by the NCAA to make certain limited expenditures related to selecting an agent before signing an agency contract for those student athletes and, contingent upon a change in NBA "one and done" rule negotiated between the NBA and the NBA Players Association as a part of the collective bargaining agreement, allow a

limited number of “elite” student athletes whose sport is basketball to sign an agency contract with a certified agent and retain their eligibility if, before the commencement of the next season, the athlete subsequently decides not to sign a professional contract and terminates the agency contract.

The revision prohibits an agent from furnishing a thing of value to a student athlete or another individual if doing so may result in the loss of eligibility of the athlete to participate in the athlete’s sport, unless:

- (1) the athlete, parent, or guardian acknowledges to the agent in a record that receipt of the thing of value may result in the loss of eligibility of the athlete to participate in the athlete’s sport; and
- (2) the agent, not later than 72 hours after furnishing the thing of value, notifies the athletic director of the educational institution the athlete is attending, or the agent has reasonable grounds to believe intends to enroll, of that fact.

The revision is not basketball specific or type of expense specific so that potential future revisions of eligibility rules by the NCAA or any other association of educational institutions governing interscholastic or intercollegiate sports will not necessarily require further amendment of the section.