

## MEMORANDUM

### Revised Uniform Athlete Agents Act Issues

#### 2015 ANNUAL MEETING

##### 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. 2014 ANNUAL MEETING DRAFT

The Annual Meeting Draft 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 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 did 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, was 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 excludes a spouse, parent, sibling, grandparent, or guardian of a student athlete from the definition of athlete agent. The act is also silent on the issue of coaches and student athletes. The definition of recruit or solicit excluded 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. This could cause the student athlete to lose his or her eligibility to participate in intercollegiate sports. Accordingly, a definition of educational institution was added and the definition of student athlete 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 is not a true reciprocal registration provision in that, while it allows for submission of the application for registration in one state to another state, the second state is free to require additional information or refuse to issue the registration on various grounds. Section 5 of the 2014 Annual Meeting draft was 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) encouraged the administrative agencies to which the enforcement of the act is delegated to cooperate with agencies from other states to that end. It was 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 were encouraged to adopt a standard form.

## E. NOTIFICATION OF EDUCATIONAL INSTITUTIONS.

Section 14 (d) imposed 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 provides 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. Section 16 of the 2014 Annual Meeting draft removed the cause of action against a student athlete and gives the student athlete a cause of action against the athlete agent.

### III. 2015 ANNUAL MEETING DRAFT

The 2015 Annual Meeting Draft differs substantively from the 2014 Annual Meeting Draft in that it further revises the definition of athlete agent; provides two alternatives for registration, the true reciprocal registration contained in the 2014 Annual Meeting Draft and a central registration office created by an interstate compact; adds additional requirements to the form of an agency contract; moves some notice provisions from Section 14 (punishable by criminal penalties) to Section 11, punishable by civil penalties; provides for bracketed alternatives for civil remedies; and increases the bracketed amount of administrative penalties that may be imposed.

A. ATHLETE AGENT DEFINITION (Section 2(2)). In addition to the revisions of the definition of athlete agent made in the 2014 Annual Meeting draft, the 2015 Annual Meeting draft includes those individuals who give consideration to a student athlete or another person in anticipation of: representing the athlete for a purpose related to the athlete's participation in athletics; serving the athlete in an advisory capacity on a matter related to finances, business pursuits, or career management decisions; or managing the business affairs of the athlete by providing assistance with bills, payments, contracts, or taxes.

B. COMMISSION ON INTERSTATE REGISTRATION OF ATHLETE AGENTS (Sections 5 through 9). The 2015 Annual Meeting Draft contains two alternatives for Sections 5 through 9. Under the UAAA, multi-state registration was not truly reciprocal in that although an individual issued a certificate or registration in one state could submit the application from the first state in another adopting state rather than filing a new application in the second state, the second state was not required to register the individual. Alternative A, which was the 2014 Annual Meeting Draft, is a true reciprocal registration provision in that if an individual is issued a certificate of registration by State A, the registration is in good standing and no disciplinary proceedings are pending against the registration, and the law in State A is the same or more restrictive as the law in the State B, State B would be required to register the individual. Alternative B is substantively identical to the requirements for registration, except that registration would be done by a multistate agency created by an interstate compact resulting from the adoption of Alternative B by five or more states.

C. AGENCY CONTRACT (Section 10). The 2015 Annual Meeting Draft adds two requirements to the signing of an agency contract. The first is that the contract contain a statement the athlete agent is registered in the state in which the contract is signed and lists any other state in which the agent is registered. The second is that the contract be accompanied by a separate record signed by the student athlete acknowledging signing the contract may result in the loss of eligibility to participate in the athlete's sport.

D. NOTICE TO EDUCATIONAL INSTITUTIONS (Sections 11 and 14). The 2014 Annual Meeting Draft contained a provision in Section 14 that required an athlete agent to notify the educational institution at which a student athlete is enrolled before contacting the

student athlete. A violation of Section 14 is subject to criminal penalties in all 42 states that adopted in the 2000 act. This provision was moved to Section 11, a violation of which is subject only to civil penalties. Also added to Section 11 is a provision that requires an athlete agent with a preexisting relationship with a student athlete who enrolls at an educational institution and receives an athletic scholarship to notify the institution of the relationship if the agent knows or should have known of the enrollment and the relationship was motivated in whole or in part by the intention of the agent to recruit or solicit the athlete to enter an agency contract or the agent actually recruited or solicited the athlete to enter a contract.

E. CRIMINAL PENALTIES (Section 15). At the 2014 Annual Meeting, there was extensive floor debate on the issue of criminal penalties. After moving the notice provision discussed above from Section 14 to Section 11, the only differences between Section 14 of the 2015 Annual Meeting Draft and the UAAA are the 2015 annual meeting draft includes, in the case where the student athlete is a minor, the parent or guardian in the class of persons with respect to whom an agent may not take certain actions and prohibits an athlete agent from encouraging another individual to take on behalf of the agent an action the agent is prohibited from taking. The drafting committee considered the floor debate and, after lengthy debate, the stakeholders and a majority of the committee feel the changes in Section 14, coupled with the facts that all 42 states that adopted the 2000 act adopted criminal penalties of some form and that the penalties are bracketed, did not warrant a change in the criminal penalties provision. As a result, Section 15 of the 2015 Annual Meeting Draft, with the exception of one minor style change, is identical to the 2000 act.

F. CIVIL REMEDIES (Section 16). The 2015 Annual Meeting Draft contains bracketed provisions for actual damages, treble damages, punitive damages, and attorneys fees.

G. ADMINISTRATIVE PENALTIES (Section 17). The UAAA contains a provision authorizing the imposition of an administrative penalty of not to exceed \$25,000, and the amount is bracketed. The 2015 Annual Meeting Draft retains the brackets but increases the amount to \$50,000.