

DRAFTING COMMITTEE CHAIR REPORT

Submitted by Dale G. Higer, Chair

Committee Name: Drafting Committee to Amend the Uniform Athlete Agents Act

Dates and Location of Committee Meeting: November 7-8, 2014, Washington. D.C.

Committee members present: Robert G. Bailey, Levi J. Benton, John L. Carroll, Dale G. Higer, Kieran Marion, Thomas J. McCracken, John T. McGarvey, Anne L. McGihon by phone on Friday, Donald E. Mielke, Rebecca Rockwell and Jerry L. Bassett, Reporter

Ex Officio members present: Harriet Lansing, Richard T. Cassidy and Steven N. Leites

Staff Liaison: Terry Morrow

ABA advisors absent: Michael P. Barnes

Observers present: John Black, Joe Briggs on Friday AM, Edgar Burch, Crady R. deGolian by phone on Friday, Steve Fehr on Friday, Steve Glaze on Friday, Matthew Hanson, Jeff Hawkins on Friday, Chris Howard, Rodney S. Maddox, Paul Pogge, Kevin Rayburn, Leslie Reynolds, Julie Steinberg and Joyce D. Thompson

Report on progress made and significant developments during the meeting:

DISCUSSION OF ENFORCEMENT PROVISIONS

Of the forty-two states that have adopted the UAAA, only nineteen have taken enforcement actions. One issue raised in previous discussions is that enforcement agencies do not know when a violation has occurred. The meeting draft added a provision requiring an educational institution to report violations of the UAAA to the enforcing agency in its state. Jerry Bassett and I were concerned that educational institutions would be reluctant to report a violation for fear that they may be sanctioned by the NCAA for the violation such as forfeiture of games played by an ineligible player, but have been convinced by representatives of the NCAA that its policy is not to punish an institution that reports a violation unless the institution did not take reasonable steps to prevent the violation or knew or should have known of the problem before they did. However, institutions may still have a concern that if they become whistle blowers, they may have a tougher time recruiting student-athletes.

Joe Briggs, representing the NFL Players Association, stated his association requires student athletes to work with registered sports agents and requires the agent to disclose the states where the agent is registered. He said the NFLPA cannot tell in what state the recruitment occurred and what happened in the recruitment process. If the NFLPA learns that a sports agent certified by the NFLPA is recruiting in a state where he is not registered, then this is reported to the legal department of the NFLPA for

appropriate action, including punishment from a letter of reprimand to a suspension. Joe Briggs said that a violation of the UAAA is not reported to the NFLPA very often.

The NFLPA has a Pipeline to the Pros program to inform student athletes on rules, including dealing with a registered sports agent. It tries to visit at least fifty colleges each year. The NFLPA has a website with a search function where an enforcement agency or an educational institution could search for NFLPA certified contract advisors, as well as financial advisors.

Steve Fehr, representing the NHL Players Association, said all four sports require sports agents to be registered before they can negotiate contracts for players. It was not clear whether registration is with the respective player association or as an agent in a state where an athlete is being recruited. I believe if the players association would require state registration under the UAAA by its registered agents, then there would be more compliance with the Act.

Jeff Hawkins, a coach on the football staff at the University of Oregon and representing the American Football Coaches Association, believes that the states should be enforcing the UAAA. He believes the NFLPA is responsible for its members and not student athletes. Paul Pogge, Associate Athletic Director for the University of North Carolina, also believes that states should be enforcing the Act.

Jerry Bassett believes the Committee should work with educational institutions to find a safe harbor that would allow student athletes to speak with the NFLPA without jeopardizing their eligibility.

I believe it is widely known that many student athletes are gaming the system and should be punished. As it now stands, the only downside to losing one's eligibility is you hire a trainer in Arizona and get ready for the draft. While the Act can't require student athletes that game the system be delayed from entering the draft or suspended from playing if they have caused harm to their alma mater, perhaps the ULC could make recommendations to the NCAA and applicable players associations and professional leagues that they consider player suspensions for violating the Act depending on the severity of the student athlete's conduct

Rodney Maddox, a member of the staff of the North Carolina Secretary of State, is very involved in the prosecution of individuals who violated North Carolina's version of the UAAA. He points out that enforcement agencies lack an understanding of how the professional sports recruiting process works and do not have staff "behind the bleachers" to observe what is going on. Regulators expect the educational institutions or others in the system will notify them when there is a problem. Alumni and boosters get concerned and players are frightened about what might happen if they talk. Sports agents and those working for them may be in other states creating barriers to investigations. No institution wants to report a violation.

The committee then discussed whether any civil lawsuit had ever been brought under the UAAA. Paul Pogge indicated that no civil suit had ever been brought under the Act. He stated that there is pressure on educational institutions to win championships and graduate students. Alumni have other priorities such as winning championships. A civil lawsuit would uncover things that educational institutions may be afraid to find and it may affect recruiting players. Jerry Bassett pointed out that unless a prosecutor sees a political advantage, he is going to avoid filing a civil lawsuit.

Rodney Maddox thought changing venue might help with enforcement. He stated that investigations need to go through multistate barriers to get information and are expensive and a grinding process. He thought an interstate compact might help. Jerry Bassett said Section 3 deals with a sports agent agreeing to venue when he registers in a state and designates the secretary of state as the agent for service of process. The problem is getting jurisdiction over a non-defendant such as a bank.

Joe Briggs said that generally 800 or so agents are certified contract advisors for the NFLPA and twenty percent represent most of the NFL players. Most people who say they are agents actually represent a player.

Don Mielke had prepared several suggestions for enhancing the enforcement of the Act. I appointed a subcommittee to review the suggestions and report back at the next meeting of the committee. John Carroll was appointed Chair, and Don Mielke, Rebecca Rockwell, Jerry Bassett and Dale Higer will serve as members on the subcommittee.

DISCUSSION OF CRIMINAL PROVISIONS UNDER THE ACT AND WHETHER THEY SHOULD REMAIN

Thirty-eight of the forty-two states that have enacted the UAAA have civil penalties and of the forty-two, twenty-two have felony and misdemeanor provisions and thirty-five have misdemeanor provisions. There does not appear to be any state that has only civil penalties.

Kevin Rayburn from the Tennessee Secretary of State's office stated that Tennessee would not want to drop felonies from its Act. There is a need for criminal penalties because of judgment proof defendants. Paul Pogge stated that criminal penalties are useful. Jeff Hawkins said you can't leave the Act weaker than it is now and bracket the provision if you have to. Tom McCracken said the provisions should be bracketed because states won't drop criminal penalties. Kieran Marion stated that felonies in an Act cause a fiscal note and could affect adoption for the states that have not adopted the Act.

Rodney Maddox said the North Carolina Sentencing Commission reviews all bills with criminal provisions and that violation of the UAAA should be a felony. If you have to pursue a defendant across state lines, then law enforcement in other states will not

assist in an arrest and extradition unless the charge is a felony. He would support search warrants and subpoenas with a motion to compel.

Steve Fehr said that criminalizing violations under the UAAA is a serious mistake. Change is clearly in the air and the NCAA is going to change.

After more discussion, it was moved and seconded that Section 15 be left in the Act. The motion passed with 6 voting yes and 2 voting no. It was then moved and seconded that Section 15 be bracketed. The motion was defeated with 4 voting yes and 6 voting no.

ACTIONS TAKEN ON THE ISSUES IDENTIFIED IN THE NOVEMBER, 2014 BACKGROUND AND ISSUES MEMORANDUM

DEFINITION OF ATHLETE AGENT

The Annual Meeting changes were reviewed by Jerry Bassett;

- i. “as a member of” was added
- ii. “or the anticipation of compensation” was added
- iii. Carved out an exception for serving a student in an advisory capacity (they work for the institution)
- iv. Accountants were added as a licensed profession
- v. Some professions are not technically “licensed”

Paul Pogge said financial advisors need to be included under the Act. He also said that we need to add to the definition a person who gives consideration to a student athlete in anticipation of representing the student athlete in the future. The NFLPA requires agents to register as certified financial advisors if they handle money. Don Mielke says there is a big loophole in the definition because it doesn't say licensed or certified by whom. It was discussed that the bad guys use financial advisors to recruit on their behalf. After further discussion, Jerry Bassett was asked to come up with a standard by which a profession would be recognized under the Act.

There was also a discussion about the Cam Newton exception. Educational institutions that are members of the NAIA rely on volunteers as coaches and recruiting consultants as a part time job. After more discussion, the Committee agreed to delete the Cam Newton provision from the Act.

The committee also discussed whether “recruiting services” should be included in the definition of athlete agent. Recruiting services offer a “best efforts” contract to get a scholarship for a student-client. Educational institutions are not allowed to work with recruiting services that are not registered with the NCAA. The consensus of the Committee was not to include recruiting services within the definition of athlete agent.

FORMER STUDENT ATHLETE DISCUSSES EXPERIENCE

In the afternoon session, Dennis Dixon, a running back for the University of Oregon football team and a Heisman candidate until a season ending injury, called in to discuss his experience as a student athlete and as an NFL player. He said that people would use all kinds of titles to avoid being called an agent. He was offered money and shoes if he would go with an agent. The process setup by Oregon was very helpful to him. He gave the checks and shoes he had been offered to Jeff Hawkins who returned them to the agents soliciting Dennis. He was contacted by phone or after games. Financial advisors pitch was, "I have these elite players under contract." The agents would not take no for an answer. He said that other NFL players said they were taken advantage of by financial advisors. The players said, "Take my money and make sure I am okay." In many cases it did not work out.

INTERSTATE COMPACT

The issue of interstate compacts is raised on page 7 of the issues memorandum. Two alternatives were presented in the meeting draft. Alternative B would create an interstate compact commission when five states adopted the provisions. The commission would serve as a registration office for agents covered by the Act in the states that were members of the compact. A central registration authority is something that sports agents want in order to simplify the registration process and cut down on registration costs. The commission would also have the ability to investigate violations of the Act and make enforcement recommendations to the appropriate state or perhaps be able to enforce the act in its member states if the state would agree. The big issue is how to fund the work of the commission. Registration fees alone are not enough to fund the commission's work. Crady deGolian from the CSG joined the Committee by phone and said the cost for an interstate compact serving military school children was about \$500,000 per year. He said you need a minimum number of two states to create a compact. The military compact required ten. Funding the commission would have to be worked out once it is created. The Committee decided to leave both alternatives in the draft and will revisit it in the Spring meeting.

CIVIL REMEDIES

Don Mielke suggested that punitive damages be included as bracketed language. John McGarvey suggested that civil penalty does not sound as bad as punitive damages. Prior versions of the Act allowed anyone damaged by the Act to bring an action. The Committee believes that such a provision would cause enactability problems for the Act. The subcommittee on damages will look at these issues. The Committee decided to limit the amount of damages to actual damages and agreed that a provision for reasonable attorney's fees should be included in brackets.

REGISTRATION SYSTEM DESIGN

There was a brief discussion on the registration form. The goal is to have a form that can be used from state to state and that the information is still accurate. Under Alternative A, a sports agent can register in State A and then show a copy of his registration to State B to register in State B after paying in additional fees required by State B. Alternative B is the interstate compact language including an enforcement mechanism. The interstate compact serves as a central registry and an agent registered with the interstate compact is registered in all states that are members of the compact. Jerry Bassett will add language to allow a state to withdraw from the compact. A discussion about funding followed and the Chicago staff was asked to look at possible funding sources for a compact. Joyce Thompson said that the NCAA could not be a funding source.

NOTIFICATION OF EDUCATIONAL INSTITUTIONS PRIOR TO CONTACTING A STUDENT-ATHLETE

The question was raised as to the meaning of “enrolled” and “enrolls” and when is a student a student. Jerry Bassett will look at this issue and make suggested changes if necessary in the next draft.

PROHIBITED CONDUCT

The Committee felt there was a difference between contacting a student athlete as defined in Section 2 and communicating or attempting to communicate as used in Section 14. The Committee decided that a different term that “contact” should be used in Subsection (d). Don Mielke said the Section should also cover a parent or guardian if the student athlete is a minor. The Committee felt that a sports agent should state in his contract with the student athlete that he is registered in the state where the contract is being signed. The Committee also felt that the student athlete should sign a separate statement acknowledging that signing the contract will make him ineligible to play or continue to play his sport in college.

REVIEW OF ACT DRAFT

Under Definitions, “professional” was added before “athlete” on the top of page 2. In lines 2-7 on page 2 added Romanette(III) to address Paul Pogge’s request that the Act cover individuals who are actually providing the listed services. Lines 8-11 on page 2, the “Cam Newton” exception, were deleted. There was a minor revision to the definition of “intercollegiate sport.” “Interscholastic sport” was added as a definition. In response to a question, Jerry Bassett said that “student-athlete” covers a student-athlete who is home schooled. “Recruit or solicit” was added as a defined term and after discussion the language was left as drafted. On line 5 on page 5, “interscholastic or intercollegiate” was stricken from the definition of “student athlete.” The Committee left unanswered whether the second sentence of the definition was necessary.

The Committee had a brief discussion on venue and decided to not add any venue provisions to the Act. Jerry Bassett reported that there only style changes to Section 4. The question was raised whether the language should be “void” or “voidable.” Jerry Bassett said he would review this issue. There was a change to Section 5, Registration, by adding “respondent” on line 5, page 11 in response to a comment at the Annual Meeting. Under Section 7, Certificate of Registration; Issuance or Denial; Renewal, the state’s administrative act would apply to the Act. The application of the state administrative act was also addressed in revised Section 3. Subsection (g) on page 24 was added to Section 6 as a result of a comment from the Annual Meeting. Under Section 11 the word “scheduled” was on pages 34 and 35. Sections 14 and 17 have already been discussed.

Areas of concern and recommendations concerning future actions by the committee, leadership, or the staff: This was an excellent meeting. Both the committee members and observers were fully engaged. In my opinion the enforcement of the Act still needs to be worked on although in the end there may be little more that the Committee can do. The Committee is divided on the inclusion of criminal penalties in the Act even though all states that have adopted the Act include criminal penalties. I anticipate that this issue will take some floor time at the Annual Meeting to resolve. At the spring meeting the Committee should be able to resolve any outstanding issues and have a draft ready for a final reading at the Annual Meeting.

Comments, suggestions and kudos for the chair, reporter or commissioners: Jerry Bassett, the reporter, did an excellent job of preparing the meeting memo and draft amendments. He helped tee up the issues the chair felt important to discuss at the meeting. Terry Morrow provided excellent support for the meeting memo.

Thank you notes that should be written: None at this time.