

MEMORANDUM
UAAA ISSUES
2014 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. PROPOSED AMENDMENTS

The substantive amendments to the UAAA proposed by the drafting committee revise the definitions of athlete agent and student athlete, require reciprocal licensing, including attempting to have a common form, encourage a central licensing process, require certain notices to be given to educational institutions, and revise 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 retains 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 expands 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. ISSUES

Should the definition of athlete agent be expanded to include activities not normally associated with negotiating an endorsement contract or a contract to play professional sports?

Is the existing definition of student athlete sufficiently clear that it applies to any individual eligible to attend a public or private elementary school, secondary school, community college, or university?

Should there be true reciprocal registration in states that have adopted the UAAA?

Should there be a common registration form for states that adopt the UAAA?

Should there be a central registration system and if so, how should it be created and funded?

Is it possible or practical to create a central registration system by an interstate compact?

Should athlete agents be required to notify educational institutions before communicating with a student athlete at the institution?

Should there be a civil remedy for damages caused by a violation of the UAAA by a student athlete?

Should a student athlete have a civil remedy caused by a violation of the UAAA by an athlete agent?