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**Business & Financial Services Committee**

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**SSB 6281**

**Brief Description:** Enacting amendments to the uniform athlete agents act.

**Sponsors:** Senate Committee on Commerce & Labor (originally sponsored by Senators Fain, Pedersen, Baumgartner and Frockt; by request of Uniform Law Commission).

**Brief Summary of Substitute Bill**

- Updates the Uniform Athlete Agents Act to reflect recent changes to the model act.

**Hearing Date:** 2/16/16

**Staff:** Peter Clodfelter (786-7127).

**Background:**

Washington's Uniform Athlete Agents Act (UAAA) is based on a model act produced by the National Conference of Commissioners on Uniform State Laws. The model act was drafted in 2000 and Washington enacted the UAAA in 2002. Forty two other states have enacted the model act. The UAAA governs relationships among student athletes, athlete agents, and educational institutions. In 2015, the National Conference of Commissioners on Uniform State Laws revised the model act and made changes like expanding the definition of "athlete agent," allowing for increased reciprocal registration between states, adding new requirements to disclosure statements, and expanding notification requirements.

Definition of "Athlete Agent" and "Agency Contract."

An athlete agent is an individual who enters into an agency contract with a student athlete or, directly or indirectly, recruits or solicits a student athlete to enter into an agency contract. Specifically excluded from the definition of athlete agent is a spouse, parent, sibling, grandparent, or legal guardian of the student athlete or an individual acting solely on behalf of a professional sports team or professional sports organization. An "agency contract" is an agreement in which a student athlete authorizes a person to negotiate or solicit on behalf of the student athlete a professional-sports-services contract or an endorsement.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

### Disclosure Form.

An individual may generally not act as an athlete agent in the State of Washington unless on the day of initial contact with a student athlete the athlete agent delivers to the student athlete a disclosure form. A disclosure form must contain the following information:

- the name of the athlete agent and the address of the athlete agent's principal place of business;
- the name of the athlete agent's business or employer, if applicable;
- any business or occupation engaged in by the athlete agent in the previous 5 years;
- a description of the athlete agent's: (i) formal training as an athlete agent, (ii) practical experience as an athlete agent, and (iii) educational background relating to the athlete agent's activities as an athlete agent;
- the names and addresses of 3 individuals not related to the athlete agent who are willing to serve as references;
- the name, sport, and last known team for each individual for whom the athlete agent provided services as an athlete agent during the previous 5 years;
- the name and address of any person who is a partner, officer, associate, or profit sharer of the business, if the business is not a corporation;
- the name and address of any person who is an officer or director and any shareholder of the business with at least a 5 percent interest, if the business is a corporation;
- whether the athlete agent or any other person associated with the athlete agent's business who is required to be named in the disclosure form has been convicted of a crime that, if committed in Washington, would be a felony or other crime involving moral turpitude, and, if so, the identity of the crime;
- whether there has been any administrative or judicial determination that the athlete agent or any other person associated with the athlete agent's business who is required to be named in the disclosure form has made a false, misleading, deceptive, or fraudulent representation;
- any instance in which the conduct of the athlete agent or any other person associated with the athlete agent's business who is required to be named in the disclosure form resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student athlete or educational institution;
- any sanction, suspension, or disciplinary action taken against the athlete agent or any other person associated with the athlete agent's business who is required to be named in the disclosure form arising out of occupational or professional conduct; and
- whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the athlete agent or any other person associated with the athlete agent's business who is required to be named in the disclosure form as an athlete agent in any state.

However, an individual may act as an athlete agent before delivering a disclosure form for all purposes except signing an agency contract if the student athlete or another person acting on behalf of the student athlete initiates communication with the individual and within 7 days after an initial act as an athlete agent, the individual delivers a disclosure form to the student athlete.

Instead of submitting the disclosure form to the student athlete, an individual who has submitted an application for and received a certificate of or a renewal of a certificate of registration or

licensure as an athlete agent in another state may submit to the student athlete a copy of the application and a valid certificate of registration or licensure from the other state, but only if the application to the other state meets the following requirements: (i) the application was submitted in the other state within the previous 6 months and the athlete agent certifies the information contained in the application is current, (ii) the application contains information substantially similar to or more comprehensive than the information required in the disclosure form in Washington, and (3) the athlete agent signed the application under penalty of perjury.

#### Agency Contract Requirements.

An agency contract between a student athlete and an athlete must be in a record signed by the parties and must contain the following information: (i) the amount and method of calculating the consideration to be paid by the student athlete for services to be provided by the athlete agent, (ii) the name of any person other than the athlete agent who will be compensated under the agency contract, (iii) a description of any expenses that the student athlete agrees to reimburse, (iv) a description of the services to be provided to the student athlete, (v) the duration of the contract, and (vi) the date of the contract's execution.

Additionally, in close proximity to the student athlete's signature, an agency contract must contain a conspicuous notice in boldface type and in capital letters providing a warning to the student athlete that if the student athlete signs the contract, the student athlete may lose eligibility to compete as a student athlete in the student athlete's sport, that both the student athlete and the athlete agent are required to notify the student athlete's athletic director prior to entering into an agency contract and after entering into an agency contract, and that the student athlete may cancel the contract within 14 days after signing it, although cancellation may not reinstate the student athlete's eligibility.

A copy of the disclosure form that the athlete agent delivered to the student athlete must be attached to the agency contract. An agency contract failing to comply with the UAAA's requirements is voidable by the student athlete. The athlete agent must give a copy of the signed agency contract to the student athlete at the time of signing.

#### Required Notices by Athlete Agents and Student Athletes to Educational Institutions.

At least 72 hours prior to entering into an agency contract, and again within 72 hours of entering the contract or before the next scheduled athletic event in which the student athlete may participate, whichever occurs first, the athlete agent and student athlete must give notice in a record of the existence of the contract and must provide a copy of the disclosure form to the athletic director of the educational institution at which the student athlete is enrolled or the athlete agent has reasonable grounds to believe the student athlete intends to enroll.

#### People Prohibited from Engaging in the Business of an Athlete Agent.

No person may engage in the business of an athlete agent who has: (i) been convicted of a crime that, if committed in Washington, would be a felony or other crime involving moral turpitude, (ii) made a materially false, misleading, deceptive, or fraudulent representation as an athlete agent or in the application for licensure or registration as an athlete agent in another state, (iii) engaged in conduct expressly prohibited by UAAA, (iv) had a registration or licensure as an athlete agent suspended, revoked, or denied or been refused renewal of registration or licensure in any state, or (v) engaged in conduct or failed to engage in conduct that resulted in a sanction,

suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event that was imposed on a student athlete or educational institution.

#### Action for Damages.

An educational institution has a right of action against an athlete agent or a former student athlete for damages caused by a violation of the UAAA. In an action brought under the UAAA, the court may award to the prevailing party costs and reasonable attorneys' fees. Damages of an educational institution under the UAAA include losses and expenses incurred because, as a result of the activities of an athlete agent or former student athlete, an educational institution was injured by a violation of the UAAA or was penalized, disqualified, or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by reasonable self-imposed disciplinary action taken to mitigate sanctions.

#### **Summary of Bill:**

Washington's UAAA is amended to reflect the recent updates to the model act.

#### Amended Definition of "Athlete Agent" and New Definitions.

The definition of an athlete agent is expanded. Athlete agents include people who, for compensation, procure employment or offer, promise, attempt, or negotiate to obtain employment for a student athlete as a professional athlete or member of a professional sports team or organization. Athlete agents also include people who, for compensation or in anticipation of compensation related to a student athlete's participation in athletics either: (i) serve the athlete in an advisory capacity on a matter related to finances, business pursuits, or career management decisions, unless the person is an employee of an educational institution acting exclusively as an employee of the institution for the benefit of the institution or (ii) manages the business affairs of the athlete by providing assistance with bills, payments, contracts, or taxes.

Athlete agents also include people who, in anticipation of representing a student athlete for a purpose related to the student athlete's participation in athletics: (i) give consideration to the student athlete or another person, (ii) serve the athlete in an advisory capacity on a matter related to finances, business pursuits, or career management decisions, or (iii) manage the business affairs of the athlete by providing assistance with bills, payments, contracts, or taxes. Athlete agents do not include people who are licensed, registered, or certified professionals and offer or provide services to a student athlete customarily provided by members of the profession, unless the person (i) recruits or solicits the student athlete to enter into an agency contract, (ii) procures employment or offers, promises, attempts, or negotiates to obtain employment for the student athlete as a professional athlete or member of a professional sports team or organization in exchange for compensation, or (iii) receives consideration for providing the services calculated using a different method than for an individual who is not a student athlete.

The express exclusion of spouses, parents, siblings, grandparents, and legal guardians of student athletes is eliminated from the definition of athlete agent.

A requirement that an individual be eligible to attend an educational institution is added to the definition of the term "student athlete."

### Disclosure Form.

Additional information must be included in the disclosure form. This additional required information includes:

- work and mobile telephone numbers of the agent;
- any means of communicating electronically with the agent, including a facsimile number, email address, and personal and business or employer web sites;
- the mailing address, telephone number, organization form, and nature of the business of the athlete agent's business or employer, if applicable;
- each social media account that the athlete agent or the agent's business or employer is affiliated with;
- history of self-employment and employment by others within the previous 5 years, including any professional or occupational license, registration, or certification held by the agent during that 5 years;
- the name of the parent or guardian of each student athlete who is a minor and who the athlete agent acted as an athlete agent on behalf of within the last 5 years;
- the names and addresses of each person who is a member or manager, or who directly or indirectly holds an equity interest of at least 5 percent of the athlete agent's business, if the business is not a corporation;
- a description of the status of any application by the athlete agent or other person associated with the athlete agent's business who is required to be named in the disclosure form for a state or federal business, professional, or occupational license, other than as an athlete agent;
- whether the athlete agent or other person associated with the athlete agent's business who is required to be named in the disclosure form has done any of the following: (i) pled guilty or no contest to, or has charges pending for, a felony or other crime involving moral turpitude; (ii) been a respondent in a civil proceeding, within the previous 15 years, including a proceeding seeking an adjudication of legal incompetence; (iii) has an unsatisfied judgment or a judgment of continuing effect, including maintenance or a child support order that is not current; (iv) has been adjudicated bankrupt or was an owner of a business that was adjudicated bankrupt; or (v) abandoned registration as an athlete agent in any state;
- each instance in which the conduct of the athlete agent or other person associated with the athlete agent's business who is required to be named in the disclosure form resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in a professional athletic event on a student athlete;
- each state in which the applicant currently is registered as an athlete agent or has applied to be registered as an athlete agent; and
- the date of any denial of an application for, suspension or revocation of, refusal to renew, withdrawal of, or termination of, the athlete agent's certification or registration, or any reprimand or censure related to the athlete agent's certification or registration.

The requirement that athlete agent applicants include the names and addresses of three people not related to the athlete agent who are willing to serve as references is eliminated.

A person who is registered or licensed as an athlete agent in another state may deliver to a student athlete on the day of initial contact with the student athlete, instead of the disclosure form that is otherwise required, the following documents: (i) a copy of the application for registration

or licensure in the other state, (ii) a statement that identifies any material change in the information on the application or verifies there is no material change in the information, signed under penalty of perjury, and (iii) a copy of the valid certificate of registration or licensure from the other state. The requirements that the application for registration or licensure in the other state be within the previous 6 months and the application contain information substantially similar to or more comprehensive than required in Washington is eliminated.

#### Agency Contract Requirements.

If a student athlete is a minor, an agency contract must be signed by the parent or guardian of the minor and the mandatory conspicuous notice must be revised stylistically to reflect that the parent or guardian is acting on behalf of the minor. The requirements that the mandatory conspicuous notice in the agency contract be in close proximity to the signature of the student athlete and be in capital letters are removed. Stylistic changes and clarifications are made to the conspicuous notice that must be included in athlete agent contracts.

The requirement that the disclosure form delivered to the student athlete on the day of initial contact with the student athlete must be attached to the agency contract is eliminated. Added is a requirement that an agency contract must be accompanied by a separate record signed by the student athlete or, if the student athlete is a minor, the parent or guardian of the athlete, acknowledging that signing the contract may result in the loss of the student athlete's eligibility to participate in the student athlete's sport. A copy of this separate signed record must be given to the student athlete or the parent or guardian of the athlete, as appropriate, in addition to a copy of the contract.

If an agency contract is voided for failure to comply with the contract form requirements, any consideration that is received by a student athlete or parent or guardian of the athlete from the athlete agent under the contract may be retained. A parent or guardian of a student athlete who is a minor may cancel an agency contract, just like a student athlete who is not a minor may do. Additionally, a parent or guardian of a student athlete may not waive the right to cancel an agency contract, just like a student athlete who is not a minor may not do.

#### Required Notices by Athlete Agents and Student Athletes to Educational Institutions.

The requirement that an athlete agent and a student athlete provide a copy of the disclosure form to the athletic director is eliminated, although the athlete agent and student athlete must still give notice to the athletic director in a record of the existence of the contract both before and after the contract is entered. Added is a requirement that a student athlete must provide to the athletic director the name and contact information of the athlete agent.

The scope of required notifications is increased. If an athlete agent has a relationship with a student athlete before the athlete enrolls in an educational institution and receives an athletic scholarship from the educational institution, the athlete agent must notify the institution of the relationship not later than 10 days after the enrollment if the athlete agent knows or should have known of the enrollment and either the relationship was motivated in whole or part by the intention of the athlete agent to recruit or solicit the student athlete to enter an agency contract in the future or the athlete agent directly or indirectly recruited or solicited the student athlete to enter an agency contract before the enrollment.

Additionally, an athlete agent must give notice in a record to the athletic director of an educational institution at which a student athlete is enrolled before the athlete agent communicates or attempts to communicate with the student athlete or the student athlete's parent or guardian, if the student athlete is a minor, to influence the student athlete to enter into an agency contract. Such a notice is also required if the athlete agent intends to communicate with another person to have that other person influence the student athlete or the student athlete's parents to enter into an agency contract.

Further, if a communication or attempt to communicate with an athlete agent is initiated by a student athlete or another person on behalf of the student athlete then, within 10 days, the athlete agent must notify in a record the athletic director of any educational institution at which the student athlete is enrolled. The term "communicating or attempting to communicate" is defined as contacting or attempting to contact by an in-person meeting, a record, or any other method that conveys or attempts to convey a message. An educational institution that becomes aware of an athlete agent's violation of the UAAA must notify any professional league or players association with which the institution is aware the athlete agent is licensed or registered of the existence of the violation.

#### People Prohibited from Engaging in the Business of an Athlete Agent.

The criminal history that disqualifies an applicant is expanded. A person who has pled guilty or no contest to or who has charges pending for a felony or other crime involving moral turpitude may not engage in the business of an athlete agent. Further, disqualifying conduct is expanded to also include conduct by an applicant resulting in the imposition of a sanction, suspension, or declaration of ineligibility to participate in a professional athletic event on a student athlete, instead of just including conduct resulting in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student athlete or educational institution.

#### Action for Damages.

A student athlete may bring an action for damages against an athlete agent for a violation of the UAAA, just like an educational institution may currently do. The authorization for an educational institution to bring an action against a former student athlete for damages caused by a violation of the UAAA is removed. An educational institution or student athlete must be adversely affected by an act or omission of the athlete agent in violation of UAAA in order to bring an action for damages. An educational institution or student athlete is adversely affected by an act or omission of the athlete agent only if, because of the act or omission, the institution or a person who was a student athlete at the time of the act or omission and enrolled in the institution (i) is suspended or disqualified from participation in an interscholastic or intercollegiate sport event by or under the rules of a state or national federation or association that promotes or regulates interscholastic or intercollegiate sports or (ii) suffers financial damage.

The specific examples of what constitutes recoverable damages by an educational institution for a violation of the UAAA are removed. An educational institution or student athlete plaintiff that prevails in an action brought under the UAAA may recover actual damages, costs, and reasonable attorneys' fees. An athlete agent found liable forfeits any right of payment for anything of benefit or value provided to the student athlete and must refund any consideration paid to the athlete agent by or on behalf of the student athlete.

A violation of the UAAA is made a violation of the state Consumer Protection Act.

An athlete agent may not encourage another person to take or assist any other person in taking any of the actions that the athlete agent is prohibited from taking to induce a student athlete to enter an agency contract. References to the parents or guardians of student athletes are added so that when an athlete agent is prohibited from taking action directed at a student athlete, such action is also prohibited when directed at the parent or guardian of a student athlete who is a minor.

Language is added so that the signature requirements pertaining to athlete agents in the UAAA are consistent with the federal Electronic Signatures in Global and National Commerce Act.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.