

Date of Hearing: April 10, 2019

ASSEMBLY COMMITTEE ON ARTS, ENTERTAINMENT, SPORTS, TOURISM, AND
INTERNET MEDIA

Kansen Chu, Chair

AB 1518 (Chu) – As Introduced February 22, 2019

SUBJECT: Student athletes: contracts.

SUMMARY: This bill would authorize a student athlete to enter into a contract with an athlete agent without losing their status as a student athlete, if the contract complies with the policy of the student athlete’s educational institution and the bylaws of the National Collegiate Athletic Association (NCAA). Specifically, **this bill:**

- 1) Clarifies that a “Student athlete” does not include any person who has entered into a valid agent contract, a valid endorsement contract, or a valid professional sports services-contract, unless both of the following conditions are met:
 - a) The contract is authorized by, and is in compliance with, an official written policy of an elementary or secondary school, college, university, or other educational institution of the student athlete.
 - b) The terms of the contract comply with the bylaws of the National Collegiate Athletic Association.
- 2) Allows athlete agents, as specified, to offer or provide money or any other thing of benefit or value to a student athlete, where it is authorized by, and is in compliance with, an official written policy of the educational institution of the student athlete and the terms of the policy comply with the bylaws of the National Collegiate Athletic Association.
- 3) Provides that the disclosure athlete agents must include in a contract with a student athlete, warning the student that he or she may lose eligibility to compete in interscholastic or intercollegiate sports upon entering into the contract and allowing the student athlete to rescind the contract within 15 days against student athletes contracting with agents, shall not apply to a contract that meets both of the requirements in (a) and (b) in number 1 above.

EXISTING LAW:

- 1) Regulates, in the Miller Ayala Athlete Agents Act, specified activities of an athlete agent in representing or to represent student and professional athletes. (Business & Professions [B&P] Code Sec. 18895 et seq.)
- 2) Contains the following definitions:
 - a) “Agent contract” as any contract or agreement in which a person authorizes or empowers an athlete agent to negotiate, or solicit on behalf of the person, with one or more professional sports teams or organizations, for the employment of the person by one or

more professional sports teams or organizations, or to negotiate or solicit on behalf of the person for the employment of the person as a professional athlete. (B&P Code §18895.2.)

- b) “Athlete agent” as any person who, directly or indirectly, recruits or solicits an athlete to enter into any specified type of contract, or for compensation procures, offers, promises, attempts, or negotiates to obtain employment for any person with a professional sports team or organization or as a professional athlete. (B&P Code §18895.2.)

Includes a talent agency as an “athlete agent” if they engage in the activities of an athlete agent as defined. (B&P Code §18895.2.)

- 3) Specifies particular types of contracts entered into by athlete agents on their own behalf or with others, and when persons may be considered as participating in negotiations to enter into a contract. (B&P Code §18895.2.)
- 4) Requires an athlete agent to file with the Secretary of State specified information about his or her background, criminal and disciplinary record, training and experience, and to advise an athlete of the availability of this information. (B&P Code §18896.)
- 5) Further requires an athlete agent to establish a trust fund and deposit into it all funds received on behalf of the athlete and, if providing financial services to the athlete, to disclose potential conflicts of interest, as specified and to provide security for claims against them in the amount of \$100,000. (B&P Code §§18897.2. and 18897.87)
- 6) Imposes additional requirements pertaining to an athlete agent’s transactions with a student athlete, specifying the circumstances under which an athlete agent may contact a student athlete, or his or her family. (B&P Code §18897.63.)
- 7) Requires the athlete agent to include a disclosure in a contract with a student athlete, warning the student that he or she may lose eligibility to compete in interscholastic or intercollegiate sports upon entering into the contract and allowing the student athlete to rescind the contract within 15 days. (B&P Code §18897.73.)
- 8) Provides for civil action to recover damages resulting from a violation and makes void any contract that fails to comply with its requirements. (Bus. & Prof. Code §18897.8.)
- 9) Declares that the violation of any provisions of the Act is a misdemeanor offense. (B&P Code § 18897.93.)

FISCAL EFFECT: This measure has been keyed non-fiscal by the Legislative Counsel.

COMMENTS:

- 1) *Author’s statement of need for legislation: NCAA rule change necessitates code conformity.* According to the author, “In men's basketball, a change was needed to permit a prospective student-athlete identified as an elite senior by USA Basketball and an enrolled student-athlete or two-year college prospective student-athlete who has requested an evaluation from the NBA Undergraduate Advisory Committee to enter into an agreement and receive benefits from an NCAA-certified agent, as specified. 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 the old NCAA rules allowed the retention of lawyers and advisors to provide professional advice at market value, such individuals were 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 argued 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 rule change, 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.

“We need AB 1518 to change California law to allow these NCAA rule changes to come into effect because the Miller-Ayala Act currently prohibits contact between agents and athletes and their families based on the prior NCAA Rules.”

2) *Background*

- a) *Miller Ayala Athlete Agents Act.* In 1996, in response to reports of a sports agent paying college students in exchange for representation, the Senate Business and Professions Committee Subcommittee on Sports held a hearing wherein they heard testimony from university officials and coaches, interscholastic sports governing bodies, attorneys, and former college athletes on the topic of athlete agents. All of these witnesses spoke of a growing pattern of various abusive practices on the part of athlete agents. All emphasized that such abusive practices have great harmful effects on the athletes and their families and friends, their athletic programs, and their schools generally, including alumni and fans. All decried the lack of meaningful oversight of athlete agents, citing insufficient penalties in current law and apparent inattention and/or inability of any agency to take action against athlete agents.

That same year, the Miller-Ayala Athlete Agents Act [AB 1987 (Miller), Chapter 957, Statutes of 1996], was passed to enact a comprehensive set of provisions governing the conduct and practice of individuals who work as athlete agents. However, it did not include a registration program, but rather required filing of information regarding the background and business practices of the athlete agent with the Secretary of State's Office.

According to the Secretary of State Special Filing Unit, 920 athlete agents or athlete agent companies have active registration on file with their office. It is unknown whether any action has been taken against athlete agents pursuant to this Act.

- b) *Recent NCAA Rule changes: Men's basketball "elite prospects" can now use agents.* According to information supplied by the author, "In a landmark declaration, the NCAA announced that, among other rule changes, (1) college basketball players can hire an agent so long as the player requests an evaluation from the NBA Undergraduate Advisory Committee (which consists of NBA team executives who provide candid advice to college players on their draft prospects); (2) assuming the NBA and National Basketball Players' Association (NBPA) consent to the following arrangement, high school basketball players who have been identified as an "elite senior prospect" by USA basketball can also be represented by an agent beginning July 1 before their senior year in high school; and (3) agents must be certified by the NCAA in order to work with high school and college athletes (however, until Aug. 1, 2020, NEPA-certified Agents will be automatically considered NCAA certified and family members or those who act solely on behalf of a pro team aren't required to be certified at all).

"College hockey and college baseball players already enjoy this form of advice. Under relevant NHL, MLB and NCAA rules, pro teams can draft players who then matriculate to college, or who stay in college, and play D-I sports. During that time, these players can consult with an "advisor" on the appropriate moment to negotiate with a pro team on leaving college. A basketball agent should be able to offer industry relevant insights to college basketball players in the same way hockey and baseball advisors do so for the players they counsel.

"The NCAA's new policy does not change any rules related to use of players' commercial identities. Therefore, NCAA agents will remain barred from negotiating any intellectual property rights on behalf of their college clients who intend to remain NCAA-eligible. (Sports Illustrated, *What's Really to Come From the NCAA's Student-Athlete Agent Announcement?* (August, 2018) <https://www.si.com/college-basketball/2018/08/08/ncaa-agents-student-athlete-one-and-done-nba-draft>)

Committee note: Proposed legislation would address a number of these issues. SB 206 (Skinner), the Fair Pay to Play Act, is currently moving through the Senate. That measure would prohibit a California public postsecondary educational institution, athletic association, conference, or other group or organization with authority over intercollegiate athletics from preventing a student participating in intercollegiate athletics from earning compensation as a result of the use of the student's name, image, or likeness or obtaining legal representation relating to the student's participation in intercollegiate athletics. The bill would prohibit an athletic association, conference, or other group or organization with authority over intercollegiate athletics from preventing a California public postsecondary educational institution from providing a student participating in intercollegiate athletics with a stipend or other compensation. The bill would prohibit the revocation of a student's scholarship as a result of earning compensation or obtaining legal representation under these provisions.

- 3) *AB 1518 is drafted more broadly and applied more narrowly than the NCAA Rules, thereby avoiding the issues potentially facing the NCAA.* The language of AB 1518 only addresses the issue of whether student athletes may communicate with and engage the services of agents when that communication and agreement are “authorized by and in compliance with an official written policy of the (student athlete’s school), and the terms comply with the bylaws of the NCAA.” As such, it is silent on the underlying rule or rules the NCAA has or may adopt. According to the author, the measure was intentionally drafted to allow the Miller Ayala Act provisions to be in compliance if and when the NCAA expands the new rule to cover additional sports and athletes, without need to introduce new legislation. A second benefit of the drafting approach taken in AB 1518, is that it seems to avoid the potential pitfalls facing the NCAA with its new rule.

As critics have pointed out, the new NCAA rules may face challenges due to a number of issues, including; their very limited application. It is estimated that the number of college players who have a plausible chance of being drafted in any year is less than 100; the limitation of the policy to male basketball players, given the existence of the WNBA; football players aren't allowed "advisors" like their classmates on the hockey and baseball teams, and they won't be eligible for agents like the star players on the men's basketball team; antitrust and equal protection actions brought by players denied access to the benefit of agents who could argue that the NCAA and its membership (which consists of colleges, conferences that are competing businesses) have joined hands in an unlawful conspiracy to segregate the labor market in anti-competitive ways, eg.; players accorded access to agents could enjoy superior chances for the pros while the rest of the player pool could be set further back in their professional pursuits, and; finally, female athletes could bring separate kinds of legal claims: equal protection and Title IX. While the U.S. Supreme Court ruled in *NCAA v. Tarkanian* that the NCAA is not a "state actor" (meaning the NCAA is not a public entity that must adhere to constitutional protections), public universities with women's basketball programs are state actors. (See, *What's Really to Come From the NCAA's Student-Athlete Agent Announcement?* *Infra.*)

- 4) *Double-referral.* Should this bill pass out of this committee, it will be re-referred to the Assembly Committee on Higher Education.
- 5) *Prior and related legislation.*
- a) SB 206 (Skinner), of 2019, discussed above. Status: Pending before the Senate Education Committee.
 - b) SB 1098 (Corbett) of 2010, would have repealed the Miller Ayala Act and adopted Uniform Athlete Agents Act. Status: Vetoed.
 - c) SB 1652 (Sher) of 2002, would have repealed the Miller Ayala Act and adopted Uniform Athlete Agents Act. Status: Vetoed.
 - d) SB 694 (Sher) of 2001, would have repealed the Miller Ayala Act and adopted Uniform Athlete Agents Act. Status: Vetoed.
 - e) AB 1987 (Miller) Chapter 857, Statutes of 1996, established the Miller Ayala Athlete Agents Act.

REGISTERED SUPPORT / OPPOSITION:

Support

There is no support on file.

Opposition

There is no opposition on file.

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