

Date of Hearing: May 14, 2020

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

Kansen Chu, Chair

AB 2538 (Chu) – As Amended February 27, 2020

SUBJECT: Athlete agents: minor athletes: health and safety.

SUMMARY: This bill would prohibit an athlete agent from sending a minor client who is a professional athlete to any location that would be hazardous or detrimental to the health, safety, morals, or education of the minor, or entering any contract that requires the minor to appear at any event or establishment where alcoholic beverages or other intoxicating substances are sold or served, as specified.

Specifically, **this bill:**

- 1) Provides that an athlete agent shall not send or cause to be sent, an athlete who is a minor to any location that would be hazardous or detrimental to the health, safety, morals, or education of the minor, the character of which place the athlete agency could have ascertained upon reasonable inquiry.
- 2) Clarifies that in determining what is hazardous or detrimental to “morals” pursuant this section, due regard shall be given to the act proscribed by Sections 311 to 314, inclusive, of the Penal Code.
- 3) Prohibits an athlete agent from contracting on behalf of an athlete who is a minor to appear at any event or establishment where alcoholic beverages or other intoxicating substances are sold to be consumed on the premises or where they are served.
- 4) Allows contracts described in number 3 above, if the athlete who is a minor is at all times accompanied by and within the sight or sound of a parent, guardian, or the athlete agent.
- 5) States the intent of the Legislature that this section be interpreted consistently with the interpretations of Sections 1700.33 and 1700.34 of the Labor Code (LC) and regulations adopted thereunder.

EXISTING LAW:

EXISTING LAW, the Miller-Ayala Athlete Agents Act:

- 1) Regulates athlete agents regarding the representation of professional and student athletes. (Business and Professions Code Section 18895, Chapter 2, Division 8.)
- 2) Defines “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. (Business and Professions Code Section 18895.2.)

- 3) Defines “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. A talent agency is considered an “athlete agent” if they engage in above defined activity. (Business and Professions Code Section 18895.2.)
- 4) Prohibits an athlete agent from owning or having a financial interest in any entity that is directly involved in the same sport as a person with whom the athlete agent has entered into an agreement contract for the purposes of negotiating an endorsement contract, financial services contract or professional sports service contract, or providing advice concerning potential or actual employment as a professional athlete. (Business and Professions Code Section 18897.27.)
- 5) Requires an athlete agent, if providing financial services to the athlete, to disclose potential conflicts of interest, as specified. (Business and Professions Code Section 18897.3.)
- 6) Prohibits an athlete agent from dividing fees with or receiving compensation from a professional sports league, team, or other organization or its representatives or employee, or offer or allow any full-time employee of a union or players’ association connected with professional sports to own or participate in any of the revenues of the athlete agent. (Business and Professions Code Section 18897.47.)
- 7) Makes the violation of any provisions of the Athlete Agents Act a misdemeanor offense. (Business and Professions Code Section 18897.93.)

FISCAL EFFECT: Unknown. This measure has been keyed as fiscal by the Legislative Counsel.

COMMENTS:

- 1) *Author’s statement of need for legislation.*

According to press reports Lucy Li made her professional golf debut at 11 years old, 13 year old Californian Olivia Moultrie became the youngest team sport player ever to go pro when she signed with Nike and the Portland Thorns of the National Women’s Soccer League, and Francis Jacobs of Mission Viejo is playing professional soccer for the Orange County S.C. club of the United Soccer League at only 14 years of age. They join thousands of children and teenagers who have broken into the ranks of professional sports. But unlike another of California’s glamorous occupations where children excel, entertainment, child athletes do not have legal protections requiring someone to assure that their health, safety, morals and educational needs are met in the rough and tumble world of professional sports and accompanying promotional engagements.

When the professional athletes are on the pitch, field or court, they are protected by rules of conduct and fair play. But when they are in an event sponsor’s cocktail party, or booster’s home, the rules change and these vulnerable children may be subjected to unwanted advances and pressure. This is especially true when alcohol or other intoxicating substances are present. The law recognized this concern in the area of children in entertainment, and put protections in place to prevent agents sending them into situations where they could be

compromised. These same protections are needed to prevent children in professional sports from being similarly endangered.

Sadly, the worst case scenarios of their lack of protection have too often played out for children in sports. In a recent article, *How prevalent is sexual abuse in sport?* The author declared that, “while sparse there is robust data on how prevalent sexual abuse in sport is,” pointing to a German Government study showing a full third of elite German soccer athletes in the German Olympic Sport Confederation have experienced some form of sexualized violence, figures supported by a University of Edinburgh survey of 6,000 student athletes reporting 29% of respondents experiencing sexual harassment in sport (17% of males versus 34% of females) with 5% of males reporting sexual harm and 3% of women. (The Conversation, Beth Daly, *How prevalent is sexual abuse in sport*, December 5, 2016). The consequences of this abuse can have lasting personal impacts and drive elite athletes from their sport (Journal of Sexual Aggression, Fasting, Kari, et al, *Consequences of sexual harassment in sport for female athletes*, July 01, 2002). The Government of Quebec Canada also studied the issue and found sexual abuse happens mainly in places where sports activities are carried out, competitions away from home, in the homes of the abuser and at social events. They recommended more attention be paid to the prevention of sexual abuse in sport, including prevention training for sports administrators and leadership and awareness raising for organizations and parents. (INSPQ, Parent & Hlimi, *Sexual Abuse of Young People in Sport*, 2012).

- 2) *Support.* According to the author, former tennis star Andrea Jaeger is responsible for bringing forward this bill idea. She writes the Committee in support to say, “I became a professional athlete at the age of 14. I was the #2 world ranked professional tennis player by the age of 16. Youth sports is a billion-dollar business. Professional sports are now producing billion-dollar athletes. As much as opportunities have increased for minors to participate in professional sports, the safety and welfare of such minor athletes in professional sports have not increased.”

She adds, “Minor athletes constantly having to cope and survive in an abusive and harmful environment results in more than the hope of success in sport dying. Young lives are being destroyed. This is more than dreams diminished from an unhealthy and unsafe environment because no law is available for protection to minors in professional sports, ... Abused bodies, damaged minds, financial exploitation and even human trafficking are happening to minor athletes in professional sports because no law is currently in place to protect minor athletes in professional sports.” She concludes by saying, “Minor athletes like myself have waited and suffered for over 40 years for a bill to be passed to protect minor athletes in professional sports. AB2538 will change that and help minor athletes receive protection in professional sports.”

- 3) *Background: The 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, as of March 13, 2020, 970 athlete agents or athlete agent companies have filed information. It is unknown whether any action has been taken against athlete agents pursuant to this Act.

4) *Analogous existing laws for protecting children in entertainment referenced in AB 2538.* According to information provided by the author, the child protection concepts contained in this bill are derived from the following Labor Code sections and regulations:

- **LC 1308.5.** The written consent of the Labor Commissioner in the form of a permit to employ a minor in the entertainment industry is required for any minor, not otherwise exempted by this chapter.
- **LC 1308.6.** No consent shall be given at any time unless the officer giving it is satisfied that all of the following conditions are met:
 - a. The environment in which the performance, concert, or entertainment is to be produced is proper for the minor.
 - b. The conditions of employment are not detrimental to the health of the minor.
 - c. The minor's education will not be neglected or hampered by his or her participation in the performance, concert, or entertainment.
- **LC 1700.33.** No talent agency shall send or cause to be sent, any artist to any place where the health, safety, or welfare of the artist could be adversely affected, the character of which place the talent agency could have ascertained upon reasonable inquiry.
- **LC 1700.34.** No talent agency shall send any minor to any saloon or place where intoxicating liquors are sold to be consumed on the premises.
- **8 California Code of Regulations, §11751.** Entertainment Industry Defined; Employment of Minors in the Entertainment Industry. ... (b) Any employer in the Entertainment Industry desiring to employ minors in any such work or activity which is not hazardous or detrimental to the health, safety, morals or education of such minors shall make an application to the Division for a Permit to Employ Minors in such work or activity. In determining what is hazardous or detrimental to

"morals" within the meaning of these regulations, due regard shall be given to the acts proscribed by Sections 311 through 314 of the California Penal Code.

- **8 California Code of Regulations**, §11757. Presence of Parents or Guardians of Minors Under Sixteen (16) Years of Age. A parent or guardian of a minor under sixteen (16) years of age must be present with, and accompany, such minor on the set or location and be within sight or sound of said minor at all times.

5) *Prior and related legislation.*

- a) AB 1518 (Chu), Chapter 222, Statutes of 2019, authorized 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).
- b) SB 101 (Corbett) Chapter 63, Statutes of 2011, narrowed provisions in the Miller-Ayala Athlete Agents Act regarding conflicts of interest for agencies servicing professional athletic teams and leagues in relation to the employment of athletes an agency may also represent.
- c) SB 238 (De Leon), Chapter 146, Statutes of 2011, requires the court to suspend, or where appropriate, revoke the privilege of a person to conduct the business of an athlete agent if the person is convicted of a violation of the act. The bill also required the court to order an athlete agent or an athlete agent's representative or employee to disgorge all consideration received in connection with a violation of the act, and would specify the distribution of those disgorged moneys.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association for Health, Physical Education, Recreation & Dance
Individual - Andrea Jaeger

Opposition

There is no opposition on file.

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