

Date of Hearing: April 23, 2019

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

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

SUBJECT: Student athletes: contracts

SUMMARY: Authorizes 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 NCAA.
- 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 NCAA.
- 3) Provides that the disclosure athlete agents must include in a contract with a student athlete, a warning that 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 (Act), specified activities of an athlete agent in representing or to represent student and professional athletes. (Business & Professions (B&P) Code Section 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; and,

- 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. Includes a talent agency as an “athlete agent” if they engage in the activities of an athlete agent as defined. (B&P Code Section 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 Section 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 Section 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 Sections 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 Section 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 Section 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. (B&P Code Section 18897.8)
- 9) Declares that the violation of any provisions of the Act is a misdemeanor offense. (B&P Code Section 18897.93)

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

COMMENTS: *Need for the bill.* 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 to change California law to allow these NCAA rule changes to come into effect in California because the Miller-Ayala Act (B&P Code Sections 18897.6 - 18897.77) which governs the relationship agents may have with student-athletes prohibits contact between agents and athletes and their families based on the prior NCAA Rules."

Background. 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.

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 Division 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.”

Intentionally broad drafting. 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.

Double referral. AB 1518 was heard on April 10, 2019 in the Assembly Committee on Arts, Entertainment, Sports, Tourism, & Internet Media, where it passed out unanimously on consent.

Prior & related legislation. SB 206 (Skinner, 2019) allows college student athletes to earn compensation for the use of their own name, image, or likeness. Allows college student athletes to obtain legal representation, such as that provided by a sports agent, in relation to their college athletics. Allows colleges and universities to provide student athletes with stipends or other compensation, in addition to and separate from scholarships that cover the total cost of attendance. Status: Pending before the Senate Appropriations Committee.

SB 1098 (Corbett, 2010), would have repealed the Miller Ayala Act and adopted Uniform Athlete Agents Act. Status: Vetoed.

SB 1652 (Sher, 2002), would have repealed the Miller Ayala Act and adopted Uniform Athlete Agents Act. Status: Vetoed.

SB 694 (Sher, 2001), would have repealed the Miller Ayala Act and adopted Uniform Athlete Agents Act. Status: Vetoed.

AB 1987 (Miller) Chapter 857, Statutes of 1996, established the Miller Ayala Athlete Agents Act.

REGISTERED SUPPORT / OPPOSITION:

Support

Association of Independent California Colleges & Universities
California State University
University of Southern California

Opposition

None on file.

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