
SENATE COMMITTEE ON EDUCATION

Senator Connie Leyva, Chair

2019 - 2020 Regular

Bill No: AB 1518 **Hearing Date:** June 26, 2019
Author: Chu
Version: May 22, 2019
Urgency: No **Fiscal:** No
Consultant: Brandon Darnell

Subject: Student athletes: contracts.

NOTE: This bill has been referred to the Committees on Business & Professions, Education, and Judiciary. A "do pass" motion should include referral to the Committee on Judiciary.

SUMMARY

This bill authorizes an athlete agent to offer or provide money or any other thing of benefit or value to a student athlete if it is authorized by, and is in compliance with, an official written policy of the student athlete's school and the terms of the contract comply with the bylaws of the National Collegiate Athletic Association.

BACKGROUND

Existing law:

- 1) Regulates the activities of athlete agents in representing students and professional athletes through the Miller-Ayala Athlete Agents Act. (Business and Professions Code (BPC) § 18895 et seq.)
- 2) Defines "agent contract" as any contract or agreement in which a person authorizes or empowers an athlete agent to negotiate or solicit with sports teams or organizations for the employment of the person. (BPC § 18895.2(a))
- 3) Defines "athlete agent" as any person who recruits or solicits an athlete to enter into any agent, endorsement, financial services, or professional sports services 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. Excludes from this definition certain professional persons, any person acting solely on the behalf of a professional sports team or organization, and specified talent agencies. (BPC § 18895.2(b))
- 4) Defines "student athlete" as any individual admitted to or enrolled as a student in an educational institution if the student is an athlete in a sports program, as specified. Excludes from this definition any students who have entered into a valid agent contract, a valid endorsement contract, or a valid professional sports services contract and students whose eligibility to participate in an intercollegiate sport has been terminated by the state or national association for the promotion and regulation of intercollegiate athletics to which their college or university belongs. (BPC § 18895.2(i))

- 5) Prohibits athlete agents and their designees from offering or providing money or any other thing of value to a student athlete. (BPC § 18897.6)
- 6) Requires athlete agents to file information with the Secretary of State before engaging in the business of an athlete agent. (BPC § 18896)
- 7) Requires every agent contract, endorsement contract, or professional sports services contract entered into by a student athlete to contain a warning about the likelihood of the student athlete losing his or her eligibility to compete as a student athlete once the contract is signed. (BPC § 18897.73)

ANALYSIS

This bill authorizes an athlete agent to offer or provide money or any other thing of benefit or value to a student athlete if it is authorized by, and is in compliance with, an official written policy of the student athlete's school and the terms of the contract comply with the bylaws of the NCAA. Specifically, this bill:

- 1) Specifies that "student athlete," for purposes of the Miller-Ayala Athlete Agents Act, 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 that contract complies with all of the following requirements:
 - 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.
 - c) The contract terminates if the student chooses to not seek employment with a professional sports team or organization as a professional athlete and instead returns to school.
- 2) Authorizes an athlete agent to offer or provide money or any other thing of benefit or value to a student athlete if it is authorized by, and is in compliance with, an official written policy of the elementary or secondary school, college, university, or other educational institution of the student athlete and the terms of the contract comply with the bylaws of the NCAA.
- 3) Exempts agent contracts, endorsement contracts, and professional sports services contracts from being required to contain a notice describing the likelihood of the student athlete losing their eligibility to compete in interscholastic or intercollegiate sports as long as the contract meets all of the following requirements:
 - 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.

- c) The contract terminates if the student chooses to not seek employment with a professional sports team or organization as a professional athlete and instead returns to school.
- 4) Requires an athlete agent who provides money or any other thing of value to a student athlete, as authorized by law, to file an itemized report of those payments with the athletic director, or their designee, of the student athlete's educational institution or the educational institution where the student athlete intends to enroll. The report must be submitted by the fifth day of the month following the month the athlete agent provided the payments, and reporting of payments must be in the format required by the educational institution.
- 5) Specifies that its provisions do not preclude an educational institution from adopting and enforcing stricter policies, rules, or regulations addressing athlete agent solicitations or athlete agent interactions with student athletes attending their institution.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, "Until recently, the NCAA has prohibited any contracts between student athletes and sports agents and the offering to a student athlete or their family of any gift or thing of value by an agent. But on August 8, 2018, the NCAA adopted a rule in men's basketball, to specify that an enrolled student-athlete may enter the National Basketball Association's draft each year during his collegiate participation without jeopardizing eligibility in that sport, as provided. In order to facilitate this rule change, the NCAA also adopted a rule allowing the limited ability for elite student athletes in men's basketball, as specified, to be represented by an NCAA-certified agent and receive specified expenses (food and transportation), without loss of eligibility. These rule changes conflict with our codification of prior NCAA practices."
- 2) ***The Miller-Ayala Athlete Agents Act.*** As noted by the Senate Business and Professions Committee, "The Miller-Ayala Athlete Agents Act includes a comprehensive set of provisions governing the conduct and practice of athlete agents. Instead of creating a registration process for athlete agents, it requires athlete agents to file specified information with the Secretary of State's Office. According to the Secretary of State Special Filing Unit, there are approximately 940 athlete agents or athlete agent companies on file as of May 2019. It is unknown whether any action has been taken against athlete agents pursuant to the Miller-Ayala Athlete Agents Act."
- 3) ***Independent Commission on College Basketball.*** The NCAA established the Commission on October 11, 2017, with former Stanford University provost and Secretary of State Condoleezza Rice as chair. According to the NCAA, "the Commission on College Basketball has been established by the NCAA Board of Governors, Division I Board of Directors and NCAA President to fully examine critical aspects of Division I men's basketball. The Commission is strongly encouraged to identify bold legislative, policy and structural modifications to improve the integrity of our processes and the well-being of our student athletes."

Further, the boards stand ready and are committed to implement appropriate meaningful and lasting changes.”

The Commission delivered its report to the NCAA in April 2018. As detailed in the Commission’s executive summary, “In brief, it is the overwhelming assessment of the Commission that the state of men’s college basketball is deeply troubled. The levels of corruption and deception are now at a point that they threaten the very survival of the college game as we know it. It has taken some time to get here, and it will take time to change course. The Commission offers its recommendations knowing that the road ahead is long – but that the first steps must be taken – and they must be bold. The indictments handed down by the Justice Department and the ongoing FBI investigation spurred the NCAA to ask for this report. Whatever the outcome of the legal process, radical changes are long overdue. We the commissioners believe that this is a final opportunity to turn the course of college basketball in the right direction. Every stakeholder will have to accept responsibility for what has happened in the past and commit to a new future if we are to succeed.”

- 4) ***The Commission’s recommendations.*** Among the commission’s recommendations was the commission’s recommendation to allow student-athletes a way to test their professional prospects and still maintain their NCAA eligibility if they do not sign a professional contract.

Specifically, the commission recommended “that high school and college players who declare for the draft and are not drafted remain eligible for college basketball unless and until they sign a professional contract. Specifically, players who are not drafted should be permitted to change their minds and attend college or return to college, provided they remain academically and otherwise eligible. The Commission also recommends imposing two additional conditions on this retention of eligibility: The player must return to the same school, and the player must request an evaluation from the National Basketball Association’s (NBA’s) Undergraduate Advisory Committee before entering the draft. The NBA has unique credibility with elite players who should have the benefit of the NBA evaluation in deciding whether to enter the draft.”

The commission made this recommendation because, “elite high school and college basketball players tend to misjudge their professional prospects. Players who think they are surefire professionals are often mistaken. The numbers tell this story: Only a very small percentage of NCAA men’s basketball players make it to the NBA (around 1.2 percent), let alone have successful careers. Yet, an NCAA Survey we commissioned showed that 59 percent of Division I players believe that they will play professionally, and NCAA research suggests that 76 percent of Division I players, 48 percent of Division II players and 21 percent of Division III players believe that they have a chance to play at the next level. Erroneously entering the NBA draft is not the kind of misjudgment that should deprive student-athletes of the valuable opportunity to enter college or to continue in college while playing basketball.”

5) **NCAA bylaw changes.** On August 8, 2018, the NCAA implemented many of the commission's recommendations, including those identified above. Specifically, the NCAA added the following NCAA bylaws:

- “12.3.1.2.1 Elite Senior Prospective Student-Athletes. In men's basketball, on or after July 1 immediately before his senior year in high school, a prospective student-athlete identified as an elite senior by USA Basketball maybe represented by an NCAA-certified agent and be represented by an agent beginning after any basketball season if they request an evaluation from the NBA Undergraduate Advisory Committee.”

This bylaw was adopted on August 8, 2018, but is contingent on the NBA eliminating it's “one-and-done” rule, which requires NBA players to be one-year removed from high school, essentially requiring them to attend college for only one year.

- “12.3.1.2.2 Enrolled Student-Athletes and Two-Year College Prospective Student-Athletes – After Request for Evaluation From NBA Undergraduate Advisory Committee. In men's basketball, after the conclusion of the playing season, a student-athlete or a two-year college prospective student-athlete who has requested an evaluation from the NBA Undergraduate Advisory Committee may be represented by an NCAA-certified agent.”

This bylaw took effect immediately on August 8, 2018.

At the same time, the NCAA also revised its bylaws to allow agents to pay for certain expenses (NCAA bylaws 12.3.1.2.3.1 and 12.3.1.2.3.2). As summarized by the NCAA, “Agents can pay for meals and transportation for players and their families if the expenses are related to the agent selection process. Also, the student cannot miss class, and the money must be spent where the student lives or attends school. Additionally, once an agreement is signed with an agent, high school and college student-athletes and their families can have meals, transportation and lodging paid for by the agent if those expenses are associated with meetings with the agent or a pro team.”

Importantly, the NCAA itself specifically states that “Because the Uniform Athlete Agents Act, Revised Uniform Agents Act *and relevant state laws regulate expenses provided by agents before a contract is signed, those rule changes are effective immediately after those laws are changed.* The changes allowing agents to provide expenses to student-athletes and prospects after a contract is signed are effective immediately.” (emphasis added)

This bill simply makes the necessary change in state law that is needed to allow student athletes the ability to maximize the opportunities afforded by these recent NCAA changes. Moreover, the bill's drafting is broad enough to enable additional student athletes in other sports to take advantage of this same opportunity, should further NCAA bylaw changes afford other student athletes such an opportunity.

- 6) ***Underlying NCAA issues.*** As indicated above, this bill is specific to ensuring that the state is not more restrictive than the NCAA. This bill does not address other prominent issues related to the NCAA, such as prohibitions against student athletes earning income from their name, image, or likeness; treating student athletes as employees, the unionization of student athletes; or potential Title IX issues within the NCAA bylaws; among others, many of which have been subject to federal and state legislative proposals.

To this point, on May 14, 2019, the NCAA president and Board of Governors appointed a working group to examine issues highlighted in recently proposed federal and state legislation related to student-athlete name, image and likeness. According to the NCAA's website, "the NCAA Board of Governors Federal and State Legislation Working Group will be made up of member representatives from all three NCAA divisions. 'This group will bring together diverse opinions from the membership — from presidents and commissioners to student-athletes — that will examine the NCAA's position on name, image and likeness benefits and potentially propose rule modifications tethered to education,' said Val Ackerman, commissioner of the Big East and working group co-chair. 'We believe the time is right for these discussions and look forward to a thorough assessment of the many complexities involved in this area.' According to the board, the group will not consider any concepts that could be construed as payment for participation in college sports. The NCAA's mission to provide opportunity for students to compete against other students prohibits any contemplation of pay-for-play."

- 7) ***Related and previous legislation.*** SB 206 (Skinner, 2019), (1) allows student-athletes at colleges and universities to receive athletic endorsements, but prohibits colleges and universities from providing athletic endorsements to prospective student athletes; (2) allows student-athletes to obtain professional representation; (3) prohibits the revocation of a student-athlete's scholarship as a consequence of receiving endorsements, or as a consequence of obtaining legal representation as authorized under these provisions; (4) prohibits any group with authority over intercollegiate athletics from preventing a postsecondary educational institution from participating in intercollegiate athletics as a consequence of that institution allowing its student-athletes to receive athletic endorsements; and (5) takes effect in January 2023. SB 206 is pending in the Assembly Arts, Entertainment, Sports, Tourism, and Internet Media Committee.

AB 1573 (Holden, 2019) adds provisions to the Student Athlete Bill of Rights (SABR) by authorizing institutions of higher education to establish a degree completion fund for student athletes, requiring institutions prepare notices related to the rights of student athletes and adding provisions prohibiting institutions from intentionally retaliating against a student athlete. AB 1573 is pending in the Senate Appropriations Committee.

AB 2747 (Holden, of the 2017-18 Legislative Session) would have authorized college athletes to self-organize, as specified, required campuses to establish a process by which the complaints of student athletes may be reported and investigated, as specified, prohibited a student athlete from being penalized for receiving gifts or income, as specified, and established and defined collegiate

mandated reporters, as specified. The bill was held in Senate Appropriations Committee.

AB 2220 (Bonta, of the 2017-18 Legislative Session) would have expanded applicability of the SABR from four universities to all intercollegiate athletic programs that provide athletic scholarships, as defined, and would have removed the limitation in existing law for funding of SABR provisions to media rights revenues derived from the university athletic department. It would further have provided a private right of action, as specified, to college athletes who claim to have had any rights established under the SABR violated by an institution of higher education, including any of its personnel. The bill was held in the Senate Appropriations Committee.

AB 1435 (Gonzalez Fletcher, of the 2017-18 Legislative Session) would have established the College Athlete Protection Act under the administration of the College Athlete Protection Commission, which would be established by the bill, for the protection of college or university athletes participating in intercollegiate athletic programs offered by institutions of higher education located in California. The bill was held in the Senate Education Committee.

SUPPORT

University of California (Sponsor)
Association of Independent California Colleges & Universities
California State University
University of Southern California

OPPOSITION

None received

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