ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE
BILL NO. 1586 By: Thomsen of the House

and

Bingman of the Senate

An Act relating to schools; amending Sections 2, 14 and 15, Chapter 375, O.S.L. 2003, as amended by Sections 1, 2 and 3, Chapter 222, O.S.L. 2009 (70 O.S. Supp. 2010, Sections 821.82, 821.94 and 821.95), which relate to the Uniform Athlete Agents Act; modifying certain definitions; modifying prohibited conduct by an athlete agent; increasing criminal penalty; and requiring certain percentage of fine to be deposited in certain fund.

AMENDMENT NO. 1. Page 1, strike the title, enacting clause and entire bill and insert

"An Act relating to athlete agents; amending Sections 2, as amended by Section 1, Chapter 222, O.S.L. 2009, 3, 5, 13, 14, as amended by Section 2, Chapter 222, O.S.L. 2009 and 15, as amended by Section 3, Chapter 222, O.S.L. 2009, Chapter 375, O.S.L. 2003 (70 O.S. Supp. 2010, Sections 821.82, 821.83, 821.85, 821.93, 821.94 and 821.95), which relate to the Uniform Athlete Agents Act; modifying definitions; authorizing Attorney General to issue subpoenas for certain material; requiring submission and maintenance of surety bond for certain registration; modifying certain inspection requirements; authorizing prosecution of certain actions; increasing certain fines; establishing fines for subsequent violations of certain provisions; directing deposit of certain fines; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 2, Chapter 375, O.S.L. 2003, as amended by Section 1, Chapter 222, O.S.L. 2009 (70 O.S. Supp. 2010, Section 821.82), is amended to read as follows:

Section 821.82. As used in the Uniform Athlete Agents Act:

1. "Agency contract" means 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 contract, including an agreement for current or future representation in which a student-athlete authorizes a person to assess and plan the financial situation of the student-athlete regarding his or her professional athletics career;

2. "Athlete agent" means 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. The term includes, but is not limited to, an individual who ~~represents~~:

a. Contributes a causal nexus to a student-athlete becoming the signator to an agency contract;

b. Represents to the public that the individual is an athlete agent; or

c. Enters into an agreement for current or future representation with a student-athlete regarding his or her future athletics career or, directly or indirectly, recruits or solicits a student-athlete to enter into such an agreement.

The term does not include a spouse, parent, sibling, grandparent, or guardian of the student-athlete or an individual acting solely on behalf of a professional sports team or professional sports organization, unless such individual acts on behalf of an athlete agent in exchange for any compensation, gift or reward or promise of compensation, gift or reward from, or on behalf of, an athlete agent;

3. "Athletic director" means an individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or the athletic program for females, as appropriate;

4. "Contact" means any type of communication, direct or indirect, between an athlete agent and a student-athlete, to recruit or solicit the student-athlete to enter into an agency contract;

5. "Endorsement contract" means an agreement under which a student-athlete is employed or receives consideration to use on behalf of the other party any value that the student-athlete may

have because of publicity, reputation, following, or fame obtained because of athletic ability or performance;

6. "Intercollegiate sport" means a sport played at the collegiate level for which eligibility requirements for participation by a student-athlete are established by a national association for the promotion or regulation of collegiate athletics;

7. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity;

8. "Professional-sports-services contract" means an agreement under which an individual is employed, or agrees to render services, as a player on a professional sports team, with a professional sports organization, or as a professional athlete;

9. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

10. "Registration" means registration as an athlete agent pursuant to the Uniform Athlete Agents Act;

11. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States; and

12. "Student-athlete" means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student-athlete for purposes of that sport.

SECTION 2. AMENDATORY Section 3, Chapter 375, O.S.L. 2003 (70 O.S. Supp. 2010, Section 821.83), is amended to read as follows:

Section 821.23. A. By acting as an athlete agent in this state, a nonresident individual appoints the Secretary of State as the individual's agent for service of process in any civil action in this state related to the individual's acting as an athlete agent in this state.

B. The Secretary of State <u>or Attorney General</u> may issue subpoenas for any material that is relevant to the administration of the Uniform Athlete Agents Act.

SECTION 3. AMENDATORY Section 5, Chapter 375, O.S.L. 2003 (70 O.S. Supp. 2010, Section 821.85), is amended to read as follows:

Section 821.85. A. An applicant for registration shall submit an application for registration to the Secretary of State in a form prescribed by the Secretary of State. An application filed under this section is a public record. The application shall be in the name of an individual and, except as provided in subsection B of

this section, signed or otherwise authenticated by the applicant under penalty of perjury and state or contain:

1. The name of the applicant and the address of the applicant's principal place of business;

2. The name of the applicant's business or employer, if applicable;

3. Any business or occupation engaged in by the applicant for the five (5) years next preceding the date of submission of the application;

4. A description of the applicant's:

a. formal training as an athlete agent,

b. practical experience as an athlete agent, and

c. educational background relating to the applicant's activities as an athlete agent;

5. The names and addresses of three individuals not related to the applicant who are willing to serve as references;

6. The name, sport, and last-known team for each individual for whom the applicant acted as an athlete agent during the five (5) years next preceding the date of submission of the application;

7. The names and addresses of all persons who are:

a. with respect to the athlete agent's business if it is not a corporation, the partners, members, officers, managers, associates, or profit-sharers of the business, and

b. with respect to a corporation employing the athlete agent, the officers, directors, and any shareholder of the corporation having an interest of five percent (5%) or greater;

8. Whether the applicant or any person named pursuant to paragraph 7 of this subsection has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony, and identify the crime;

9. Whether there has been any administrative or judicial determination that the applicant or any person named pursuant to paragraph 7 of this subsection made a false, misleading, deceptive, or fraudulent representation;

10. Any instance in which the conduct of the applicant or any person named pursuant to paragraph 7 of this subsection 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;

11. Any sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to paragraph 7 of this subsection arising out of occupational or professional conduct; and

12. Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration

or licensure of the applicant or any person named pursuant to paragraph 7 of this subsection as an athlete agent in any state.

B. An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another state, may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to subsection A of this section. The Secretary of State shall accept the application and the certificate from the other state as an application for registration in this state if the application to the other state:

1. Was submitted in the other state within six (6) months next preceding the submission of the application in this state and the applicant certifies that the information contained in the application is current;

2. Contains information substantially similar to or more comprehensive than that required in an application submitted in this state; and

3. Was signed by the applicant under penalty of perjury.

C. Every applicant for registration shall also submit to the Secretary of State a valid surety bond in the penal sum of Two Hundred Fifty Thousand Dollars ($250,000.00) conditioned upon the athlete agent not violating any provision of this act. Every athlete agent registered under the provisions of this act shall

thereafter maintain such a surety bond in like amount as a condition of continued registration.

SECTION 4. AMENDATORY Section 13, Chapter 375, O.S.L. 2003 (70 O.S. Supp. 2010, Section 821.93), is amended to read as follows:

Section 821.93. A. An athlete agent shall retain the following records for a period of five (5) years:

1. The name and address of each individual represented by the athlete agent;

2. Any agency contract entered into by the athlete agent; and

3. Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract.

B. Records required by subsection A of this section to be retained shall be open to inspection by the Secretary of State and the Attorney General during normal business hours.

C. The Secretary of State shall make records required by subsection A of this section available to the Attorney General in an electronic format if so requested.

SECTION 5. AMENDATORY Section 14, Chapter 375, O.S.L. 2003, as amended by Section 2, Chapter 222, O.S.L. 2009 (70 O.S. Supp. 2010, Section 821.94), is amended to read as follows:

Section 821.94. A. An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, shall not:

1. Give any materially false or misleading information or make a materially false promise or representation;

2. Furnish anything of value to a student-athlete before the student-athlete enters into the agency contract; or

3. Furnish anything of value to any individual other than the student-athlete or another registered athlete agent.

B. An athlete agent shall not ~~intentionally~~:

1. Initiate contact with a student-athlete unless the athlete agent is currently registered pursuant to the Uniform Athlete Agents Act;

2. Refuse or fail to retain or permit inspection of the records required to be retained by Section 821.93 of this title;

3. Fail to register when required by Section 821.84 of this title;

4. Provide materially false or misleading information in an application for registration or renewal of registration;

5. Predate or postdate an agency contract; or

6. Fail to notify a student-athlete before the student-athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate as a student-athlete in that sport.

C. An athlete agent is prohibited from any contact with a student-athlete who is not eligible to enter into a professional-

sports-services contract. For the purposes of this subsection, "contact" shall not include general promotional brochures.

D. The Attorney General or a district attorney may bring an action to prosecute any civil or criminal actions as provided by this act. The Attorney General or a district attorney may also bring an action to recover actual damages, expenses, restitution, disgorgement of all compensation, consideration, gifts or profits, and penalties attributed to or flowing from a violation of this act.

SECTION 6. AMENDATORY Section 15, Chapter 375, O.S.L. 2003, as amended by Section 3, Chapter 222, O.S.L. 2009 (70 O.S. Supp. 2010, Section 821.95), is amended to read as follows:

Section 821.95. A. An athlete agent who violates Section 821.94 of this title is guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not less than ~~One Thousand Dollars ($1,000.00)~~ Ten Thousand Dollars ($10,000.00) and not more than ~~Ten Thousand Dollars ($10,000.00)~~ Two Hundred Fifty Thousand Dollars ($250,000.00), or by imprisonment not to exceed one (1) year, or by both such fine and imprisonment.

B. An athlete agent who violates Section 821.94 of this title upon a second or subsequent conviction shall be guilty of a felony and subject to a fine of not less than Fifty Thousand Dollars ($50,000) and not more than Five Hundred Thousand Dollars ($500,000), or by imprisonment not to exceed three (3) years, or by both such fine and imprisonment. All prior convictions in any state

of acts that would constitute a violation under Section 821.94 of this title shall also constitute prior convictions under this section.

C. Fifty percent (50%) of all fines collected pursuant to this section shall be deposited in the Attorney General's Law Enforcement Revolving Fund created in Section 19.1 of Title 74 of the Oklahoma Statutes.

SECTION 7. This act shall become effective November 1, 2011."

Passed the Senate the 19th day of April, 2011.

_____
Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2011.

_____
Presiding Officer of the House of Representatives

ENGROSSED HOUSE
BILL NO. 1586 By: Thomsen of the House

and

Bingman of the Senate

An Act relating to schools; amending Sections 2, 14 and 15, Chapter 375, O.S.L. 2003, as amended by Sections 1, 2 and 3, Chapter 222, O.S.L. 2009 (70 O.S. Supp. 2010, Sections 821.82, 821.94 and 821.95), which relate to the Uniform Athlete Agents Act; modifying certain definitions; modifying prohibited conduct by an athlete agent; increasing criminal penalty; and requiring certain percentage of fine to be deposited in certain fund.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 8. AMENDATORY Section 2, Chapter 375, O.S.L. 2003, as amended by Section 1, Chapter 222, O.S.L. 2009 (70 O.S. Supp. 2010, Section 821.82), is amended to read as follows:

Section 821.82 As used in the Uniform Athlete Agents Act:

1. "Agency contract" means 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 contract. <u>The term includes an agreement in which a student-athlete authorizes a person to assess and plan the financial situation of the student-athlete</u>;

2. “Athlete agent” means 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. The term includes an individual who represents to the public that the individual is an athlete agent. The term also includes an individual who enters into an agreement with the student-athlete to assess and plan the financial situation of the student-athlete, including an individual who represents to the general public that the individual is a financial advisor or planner of any kind. The term does not include a spouse, parent, sibling, grandparent, or guardian of the student-athlete or an individual acting solely on behalf of a professional sports team or professional sports organization;

3. “Athletic director” means an individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or the athletic program for females, as appropriate;

4. “Contact” means any type of communication, direct or indirect, between an athlete and a student-athlete, to recruit or solicit the student-athlete to enter into an agency contract;

5. “Endorsement contract” means an agreement under which a student-athlete is employed or receives consideration to use on

behalf of the other party any value that the student-athlete may have because of publicity, reputation, following, or fame obtained because of athletic ability or performance;

6. "Intercollegiate sport" means a sport played at the collegiate level for which eligibility requirements for participation by a student-athlete are established by a national association for the promotion or regulation of collegiate athletics;

7. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity;

8. "Professional-sports-services contract" means an agreement under which an individual is employed, or agrees to render services, as a player on a professional sports team, with a professional sports organization, or as a professional athlete;

9. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

10. "Registration" means registration as an athlete agent pursuant to the Uniform Athlete Agents Act;

11. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any

territory or insular possession subject to the jurisdiction of the United States; and

12. "Student-athlete" means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student-athlete for purposes of that sport.

SECTION 9. AMENDATORY Section 14, Chapter 375, O.S.L. 2003, as amended by Section 2, Chapter 222, O.S.L. 2009 (70 O.S. Supp. 2010, Section 821.94), is amended to read as follows:

Section 821.94 A. An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, shall not:

1. Give any materially false or misleading information or make a materially false promise or representation;

2. Furnish anything of value to a student-athlete before the student-athlete enters into the agency contract; or

3. Furnish anything of value to any individual other than the student-athlete or another registered athlete agent.

B. An athlete agent shall not ~~intentionally~~:

1. Initiate contact with a student-athlete unless the athlete agent registered pursuant to the Uniform Athlete Agents Act;

2. Refuse or fail to retain or permit inspection of the records required to be retained by Section 821.93 of this title;

3. Fail to register when required by Section 821.84 of this title;

4. Provide materially false or misleading information in an application for registration or renewal of registration;

5. Predate or postdate an agency contract; or

6. Fail to notify a student-athlete before the student-athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate as a student-athlete in that sport.

C. An athlete agent is prohibited from any contact with a student-athlete who is not eligible to enter into a professional-sports-services contract. For the purposes of this subsection, "contact" shall not include general promotional brochures.

SECTION 10. AMENDATORY Section 15, Chapter 375, O.S.L. 2003, as amended by Section 3, Chapter 222, O.S.L. 2009 (70 O.S. Supp. 2010, Section 821.95), is amended to read as follows:

Section 821.95 A. An athlete agent who violates Section 821.94 of this title is guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not less than ~~One Thousand Dollars ($1,000.00)~~ Ten Thousand Dollars ($10,000.00) and not more than ~~Ten Thousand Dollars ($10,000.00)~~ Two Hundred Fifty Thousand Dollars ($250,000.00), or by imprisonment not to exceed one (1) year, or by both such fine and imprisonment.

B. Fifty percent (50%) of all fines collected pursuant to this section shall be deposited in the Attorney General's Law Enforcement Revolving Fund created in Section 19.1 of Title 74 of the Oklahoma Statutes.

Passed the House of Representatives the 17th day of February, 2011.

_____
Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2011.

_____
Presiding Officer of the Senate