

Enrolled Senate Bill 5

Sponsored by Senators COURTNEY, MANNING JR; Senator RILEY, Representatives ALONSO LEON, BYNUM, DEXTER, HOLVEY, WILDE

CHAPTER

AN ACT

Relating to student athletes; creating new provisions; amending ORS 702.005, 702.027 and 702.047; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) As used in this section:

(a) "Athletic association, conference or organization with authority over intercollegiate sports" includes the National Collegiate Athletic Association.

(b) "Post-secondary institution of education" means:

(A) A public university listed in ORS 352.002.

(B) An Oregon-based, generally accredited, private institution of higher education.

(c)(A) "Student's rights" means the rights of a student enrolled in a post-secondary institution of education to earn compensation for use of the student's name, image or likeness and to contract with and retain professional representation or an athlete agent.

(B) "Student's rights" does not include a right to receive compensation from a post-secondary institution of education.

(2) Except as provided in this section, a post-secondary institution of education or an athletic association, conference or organization with authority over intercollegiate sports may not:

(a) Prohibit, prevent or restrict a student athlete from exercising the student's rights.

(b) Penalize or retaliate against a student athlete for exercising the student's rights.

(c) Prohibit a student athlete from participating in an intercollegiate sport for exercising the student's rights.

(d) Impose an eligibility requirement on a scholarship or grant that requires a student athlete to refrain from exercising the student's rights.

(e) Prohibit a student athlete from receiving food, drink, lodging or medical expenses or insurance coverage from a third party as compensation for use of the student's name, image or likeness.

(3)(a) A student athlete may not enter into a contract that provides compensation to the student athlete for use of the student athlete's name, image or likeness if terms of the contract conflict with the student athlete's team rules or with terms of a contract entered into between the student athlete's post-secondary institution of education and a third party, except neither the team rules nor a contract entered into between the post-secondary institution of education and a third party may prevent a student athlete from earning compensation for use of the student athlete's name, image or likeness when not engaged in official

team activities, including participating in or being part of an advertisement that was created while not engaged in official team activities but that may otherwise be broadcasted, displayed or disseminated at any time.

(b) A student athlete who enters into a contract that provides compensation to the student athlete for use of the student athlete's name, image or likeness shall disclose the contract to an official of the post-secondary institution of education designated by the institution if the student athlete is a team member or, if the student athlete is not a team member, at the time the student athlete seeks to become a team member.

(c) If the post-secondary institution of education asserts that the terms of the contract conflict with the team rules or with terms of a contract entered into between the student athlete's post-secondary institution of education and a third party, the institution shall disclose the specific rules or terms asserted to be in conflict to the student athlete or to the student athlete's professional representative or athlete agent if the student athlete is represented.

(4) A post-secondary institution of education or an athletic association, conference or organization with authority over intercollegiate sports may not provide to a prospective or current student athlete compensation for use of the student athlete's name, image or likeness.

(5) A student athlete may not contract with or retain a person as the student athlete's professional representative or athlete agent, if the person represented a post-secondary institution of education at any time in the preceding four years.

(6) Nothing in this section prohibits a post-secondary institution of education from establishing or enforcing a conduct code that is applicable to all students enrolled at the institution.

SECTION 2. ORS 702.027 is amended to read:

702.027. An athlete agent may not intentionally:

(1) Initiate contact with a student athlete or, if the athlete is a minor, a parent or guardian of the athlete unless registered under ORS 702.005 to 702.065, 702.991 and 702.994;

(2) Refuse or fail to retain or permit inspection of the records required to be retained by ORS 702.059;

(3) Fail to register when required by ORS 702.012;

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

(5) Predate or postdate a written agency contract; [or]

(6) Fail to notify a student athlete or, if the athlete is a minor, a parent or guardian of the athlete before the student athlete, parent or guardian enters into an agency contract for a particular sport that entering into the agency contract may make the student athlete ineligible to participate as a student athlete in that sport[.]; or

(7) Represent a student athlete who is enrolled in a post-secondary institution of education, if the athlete agent represented a post-secondary institution of education at any time in the preceding four years.

SECTION 3. ORS 702.005 is amended to read:

702.005. As used in ORS 702.005 to 702.065, 702.991 and 702.994 **and section 1 of this 2021 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.

(2)(a) "Athlete agent" means an individual who:

(A) Directly or indirectly recruits or solicits a student athlete to enter into an agency contract; or

(B) For compensation, procures employment or offers, promises, attempts or negotiates to obtain employment for a student athlete as a professional athlete or member of a professional sports team or organization;

(C) For compensation or in anticipation of compensation related to a student athlete's participation in athletics:

(i) Serves the athlete in an advisory capacity on a matter related to finances, business pursuits or career management decisions; or

(ii) Manages the business affairs of the athlete by providing assistance with bills, payments, contracts or taxes;

(D) In anticipation of representing a student athlete for a purpose related to the athlete's participation in athletics:

(i) Gives consideration to the athlete or another person;

(ii) Serves the athlete in an advisory capacity on a matter related to finances, business pursuits or career management decisions; or

(iii) Manages the business affairs of the athlete by providing assistance with bills, payments, contracts or taxes; or

(E) Is a licensed, registered or certified professional and offers or provides services to a student athlete customarily provided by members of the profession and the individual:

(i) Also recruits or solicits the athlete to enter into an agency contract;

(ii) Also, for compensation, procures employment or offers, promises, attempts or negotiates to obtain employment for the athlete as a professional athlete or member of a professional sports team or organization; or

(iii) Receives consideration for providing the services calculated using a different method than for an individual who is not a student athlete.

(b) "Athlete agent" does not include an individual who:

(A) Acts solely on behalf of a professional sports team or organization;

(B) Is employed by, and acts solely on behalf of, a publicly traded corporation engaged in consumer brand marketing and seeking to negotiate an endorsement contract;

(C) Serves a student athlete in an advisory capacity on a matter related to finances, business pursuits or career management decisions and the individual is an employee of an educational institution acting exclusively as an employee of the institution for the benefit of the institution; or

(D) Is a licensed, registered or certified professional and offers or provides services to a student athlete customarily provided by members of the profession.

(3) "Athletic director" means:

(a) 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;

(b) If the educational institution is a public or private elementary school or secondary school and the educational institution does not have a person responsible for administering the overall athletic program:

(A) The principal of the educational institution; or

(B) If the educational institution does not have a principal, the person designated by the governing body of the school district, education service district or charter school to manage the educational institution; or

(c) If the educational institution is a technical or vocational school, community college or university and the educational institution does not have a person responsible for administering the overall athletic program:

(A) The president of the educational institution; or

(B) If the educational institution does not have a president, the person designated by the governing body of the educational institution to manage the educational institution.

(4) "Contact" means a 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) "Educational institution" means a public or private elementary school, secondary school, technical or vocational school, community college, university or other educational institution.

(6) "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.

(7) "Enrolled" means registered for courses and attending athletic practice or class.

(8) "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 that promotes or regulates collegiate athletics.

(9) "Interscholastic sport" means a sport played between educational institutions that are not community colleges, colleges or universities.

(10) "Licensed, registered or certified professional" means an individual who is licensed, registered or certified as an attorney, dealer in securities, financial planner, insurance agent, real estate broker or sales agent, tax consultant or accountant or a member of a profession, other than that of athlete agent, who is licensed, registered or certified by the state or a nationally recognized organization that licenses, registers or certifies members of the profession on the basis of experience, education or testing.

(11) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, business or nonprofit entity, joint venture, public body, as defined in ORS 174.109, or any other legal or commercial entity.

(12) "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.

(13) "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.

(14)(a) "Recruit or solicit" means attempt to influence the choice of an athlete agent by a student athlete or, if the athlete is a minor, a parent or guardian of the athlete.

(b) "Recruit or solicit" does not include giving advice on the selection of a particular athlete agent in a family, coaching or social situation unless the individual giving the advice does so because of the receipt or anticipated receipt of an economic benefit, directly or indirectly, from the agent.

(15) "Registration" means registration as an athlete agent pursuant to ORS 702.005 to 702.065, 702.991 and 702.994.

(16) "Sign" means, with present intent to authenticate or adopt a record:

(a) To execute or adopt a tangible symbol; or

(b) To attach to or logically associate with the record an electronic symbol, sound or process.

(17) "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.

(18) "Student athlete" means an individual who is eligible to attend an educational institution who engages in, is eligible to engage in or may be eligible in the future to engage in any interscholastic sport or intercollegiate sport. If an individual is permanently ineligible to participate in a particular interscholastic sport or intercollegiate sport, the individual is not a student athlete for purposes of that sport.

SECTION 4. ORS 702.047 is amended to read:

702.047. (1) A written agency contract must be in a record, signed or otherwise authenticated by the parties.

(2) A written agency contract must state or contain:

(a) The amount and method of calculating the consideration to be paid by the student athlete for services to be provided by the athlete agent under the contract and any other consideration the athlete agent has received or will receive from any other source for entering into the contract or for providing the services;

(b) The name of any person not listed in the application for registration or renewal of registration who will be compensated because the student athlete or, if the athlete is a minor, the parent or guardian of the athlete signed the written agency contract;

(c) A description of any expenses that the student athlete agrees to reimburse;

(d) A description of the services to be provided to the student athlete;

(e) The duration of the contract;

(f) The date of execution; and

(g) A statement that the athlete agent is registered as an athlete agent in this state and a list of any other states in which the agent is registered as an athlete agent.

(3) **Except where section 1 of this 2021 Act applies**, a written agency contract must contain, in close proximity to the signature of the student athlete or, if the athlete is a minor, the signature of the parent or guardian of the athlete, a conspicuous notice in boldfaced type in capital letters stating:

WARNING TO THE STUDENT ATHLETE:

IF YOU OR YOUR PARENT OR GUARDIAN SIGNS THIS CONTRACT:

(1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT ATHLETE IN YOUR SPORT.

(2) IF YOU HAVE AN ATHLETIC DIRECTOR, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, OR BEFORE YOU PARTICIPATE IN ANY INTERSCHOLASTIC OR INTERCOLLEGIATE SPORTS EVENT, WHICHEVER OCCURS FIRST, THAT YOU HAVE ENTERED INTO THIS CONTRACT AND PROVIDE THE NAME AND CONTACT INFORMATION OF THE ATHLETE AGENT.

(3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.

(4) A written agency contract that does not conform to this section is voidable by the student athlete or, if the athlete is a minor, the parent or guardian of the athlete. If the contract is voided, any consideration received from the athlete agent under the contract to induce entering into the contract is not required to be returned.

(5) The athlete agent shall give a record of the written agency contract to the student athlete or, if the athlete is a minor, to the parent or guardian of the athlete at the time of execution.

(6) **Except where section 1 of this 2021 Act applies**, an agency contract must be accompanied by a separate record signed by the student athlete or, if the athlete is a minor, the parent or guardian of the athlete acknowledging that signing the contract may result in the loss of the athlete's eligibility to participate in the athlete's sport.

(7) At the time an agency contract is executed, the athlete agent shall give the student athlete or, if the athlete is a minor, the parent or guardian of the athlete a copy in a record of the contract and the separate acknowledgement as required by subsection (6) of this section.

(8) If a student athlete is a minor, an agency contract must be signed by the parent or guardian of the athlete and the notice required by subsection (3) of this section must be revised accordingly.

SECTION 5. Section 1 of this 2021 Act and the amendments to ORS 702.005, 702.027 and 702.047 by sections 2 to 4 of this 2021 Act apply to contracts or agreements entered into or renewed on or after July 1, 2021.

SECTION 6. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.

Passed by Senate June 3, 2021

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 22, 2021

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Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2021

Approved:

.....M,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2021

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Shemia Fagan, Secretary of State