

SESSION OF 2003

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 61**

As Agreed to April 2, 2003

Brief *

SB 61 would enact the Uniform Athlete Agents Act promulgated by the National Conference of Commissioners on Uniform State Laws and would repeal the existing Kansas Athlete Agents Act enacted in 1996.

The major provisions of the bill are as follows:

Definitions. The term "athlete agent" is defined to mean 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 does not include a spouse, parent, sibling, or grandparent of the student-athlete or an individual acting solely on behalf of a professional sports organization.

The term "student athlete" is defined as 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.

See Section 2 for other definitions.

Athlete Agent Registration. An individual may not act as an athlete agent in this state without holding a certificate of registration. Before being issued a certificate of registration, an individual may act as an athlete agent in Kansas for all purposes except signing an agency contract, if: (1) a student-athlete or another person acting on

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behalf of the student-athlete initiates communication with the individual; and (2) within seven days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in this state. An agency contract resulting from conduct in violation of this act is void and the athlete agent shall return any consideration received under the contract.

The fee for registration and annual renewals is set at \$500 in Section 9. The registration requirements and process is contained in Sections 5 and 6.

Agency Contract Requirements. Section 10 contains agency contract requirements, including that the contract must contain:

1. the amount and method of calculating the consideration to be paid by the student-athlete for services to be provided by the athlete agent 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;
2. the name of any person not listed in the application for registration or renewal of registration who will be compensated because the student-athlete signed the agency contract;
3. a description of any expenses that the student-athlete agrees to reimburse;
4. a description of the services to be provided to the student-athlete;
5. the duration of the contract; and
6. the date of execution.

An agency contract must contain, in close proximity to the signatures a boldface warning statement that:

- (1) You may lose your eligibility to compete as a student-athlete in your sport;
- (2) If you have an athletic director, within 72 hours after entering into this contract, both you and your athlete agent must notify your athletic director; and

(3) You may cancel this contract within 14 days after signing it. Cancellation of this contract may not reinstate your eligibility.

Educational Institution Cause of Action Comparative Negligence. Section 15 gives an educational institution a cause of action against an athlete agent or a former student athlete for damages caused by a violation of this act. Damages of an educational institution include losses and expenses incurred because, as a result of the conduct of an athlete agent, the educational institution was injured by a violation of this act or was penalized, disqualified, or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by reasonable self-imposed disciplinary action taken to mitigate sanctions likely to be imposed by such an organization. Liability shall be determined under the Kansas comparative negligence law.

Civil Penalties. The Secretary of State may assess a civil penalty against an athlete agent not to exceed \$25,000 for a violation of this act. A civil penalty owed under this section may be recovered in a civil action brought by the Attorney General at the request of the Secretary.

Criminal Penalties—Prosecution for Violations. The bill in Section 14 establishes the new crime of criminal conduct by an athlete agent as a class A nonperson misdemeanor. The crime is defined as criminal conduct when:

- (1) An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, does any of the following:
 - (A) Gives any materially false or misleading information or makes a materially false promise or representation;
 - (B) furnishes anything of value to a student-athlete before the student-athlete enters into the agency contract; or
 - (C) furnishes anything of value to any individual other than the student-athlete or another registered athlete agent; or
- (2) an athlete agent intentionally:
 - (A) Initiates contact with a student-athlete unless registered under this act;
 - (B) refuses or fails to retain or permit inspection of the records required to be retained by section 13, and amendments thereto;

- (C) fails to register when required by section 4, and amendments thereto;
- (D) provides materially false or misleading information in an application for registration or renewal of registration;
- (E) predates or postdates an agency contract; or
- (F) fails 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.

If the Secretary of State determines that a violation of the criminal provisions has occurred, the Secretary shall refer the case to the Attorney General for prosecution. On the determination of the Secretary that a violation of this act is occurring or is threatened, the Secretary or the Attorney General may bring an action in district court in Shawnee County to enjoin the violation or threatened violation.

Fee Fund. There is created in the State Treasury the Athlete Agent Registration Fee Fund, which shall be administered by the Secretary of State. All fees, civil penalties, and other moneys credited to the athlete agent registration fee fund shall be used for the expenses incurred for the performance of the duties and functions of the Secretary of State.

Open Records Exemption. The bill would exclude information received as a result of a subpoena.

Background

The Senate version adopted the comparative negligence standard.

The House version deleted the cause of action against a student-athlete, the comparative negligence provision, and clarified that the open record exemption only pertains to information gathered as a result of a subpoena. In addition, the House Committee deleted the proviso whereby the losing party would pay costs and fees (the English rule). The Conference Committee agreed to put the comparative negligence provision back in the bill and to allow a cause of action against a former athlete.

