



COLORADO

**Department of
Regulatory Agencies**

Colorado Office of Policy, Research &
Regulatory Reform

2020 Sunrise Review

Athlete Agents



October 15, 2020



COLORADO

**Department of
Regulatory Agencies**

Executive Director's Office

October 15, 2020

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The General Assembly established the sunrise review process in 1985 as a way to determine whether regulation of a certain profession or occupation is necessary before enacting laws for such regulation and to determine the least restrictive regulatory alternative consistent with the public interest. Pursuant to section 24-34-104.1, Colorado Revised Statutes (C.R.S.), the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) at the Department of Regulatory Agencies (DORA) undertakes a robust review process culminating in the release of multiple reports each year on October 15.

A national leader in regulatory reform, COPRRR takes the vision of their office, DORA and more broadly of our state government seriously. Specifically, COPRRR contributes to the strong economic landscape in Colorado by ensuring that we have thoughtful, efficient and inclusive regulations that reduce barriers to entry into various professions and that open doors of opportunity for all Coloradans.

As part of this year's review, COPRRR has completed its evaluation of the sunrise application for the regulation of athlete agents and is pleased to submit this written report.

The report discusses the question of whether there is a need for regulation in order to protect the public from potential harm, whether regulation would serve to mitigate the potential harm and whether the public can be adequately protected by other means in a more cost-effective manner.

To learn more about the sunrise review process, among COPRRR's other functions, visit coprrr.colorado.gov.

Sincerely,

Patty Salazar
Executive Director



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Background

Sunrise Process

Colorado law, section 24-34-104.1, Colorado Revised Statutes (C.R.S.), requires that individuals or groups proposing legislation to regulate any occupation or profession first submit information to the Department of Regulatory Agencies (DORA) for the purposes of a sunrise review. The intent of the law is to impose regulation on occupations and professions only when it is necessary to protect the public health, safety or welfare. DORA's Colorado Office of Policy, Research and Regulatory Reform (COPRRR) must prepare a report evaluating the justification for regulation based upon the criteria contained in the sunrise statute:¹

- (I) Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety, or welfare of the public, and whether the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;
- (II) Whether the public needs, and can reasonably be expected to benefit from, an assurance of initial and continuing professional or occupational competence;
- (III) Whether the public can be adequately protected by other means in a more cost-effective manner; and
- (IV) Whether the imposition of any disqualifications on applicants for licensure, certification, relicensure, or recertification based on criminal history serves public safety or commercial or consumer protection interests.

Any professional or occupational group or organization, any individual, or any other interested party may submit an application for the regulation of an unregulated occupation or profession. Applications must be accompanied by supporting signatures and must include a description of the proposed regulation and justification for such regulation.

Methodology

During the sunrise review process, COPRRR staff performed a literature search, contacted and interviewed the sunrise applicant, reviewed licensure laws in other states, and interviewed stakeholders. To determine the number and types of complaints filed against athlete agents in Colorado, COPRRR staff contacted the Attorney General's Office, Consumer Protection Section, the Office of Attorney Regulation Counsel and the University of Colorado and Colorado State University athletic departments.

¹ § 24-34-104.1(4)(b), C.R.S.

Profile of the Profession

According to the National Collegiate Athletic Association (NCAA), there are more than 450,000 student-athletes playing a variety of sports in college.² Sports include, but are not limited to football, basketball, baseball, hockey and soccer.

The NCAA provides opportunities for student-athletes to compete in their respective sports at the collegiate level. Some high profile athletic programs in Colorado include, the University of Colorado, University of Denver (DU), Colorado State University, Air Force Academy and Colorado College. For example, DU's men's hockey team has won multiple national championships.

The NCAA reports that less than two percent of student-athletes become professional athletes.³ Most student-athletes who have the opportunity to become professional athletes are represented by athlete agents. Athlete agents are also known as "student-athlete agents," "sports agents," "college athlete agents," "college sports agents," or "agents."⁴

Athlete agents represent professional athletes and student-athletes who have aspirations of becoming professional athletes. The focus of this sunrise review is on athlete agents who represent student-athletes, and references to athlete agents are to those who represent student-athletes.

Athlete agents are individuals who enter into contracts with student-athletes, or directly or indirectly, recruit, or solicit student-athletes to enter into contracts.⁵ Athlete agents also perform the following duties:⁶

- For compensation or in anticipation of compensation related to a student-athlete's participation in athletics, serves the athlete in an advisory capacity on matters related to finances, business pursuits, or career management decisions.
- In anticipation of or representing a student-athlete for a purpose related to the athlete's participation in athletics:
 - Gives consideration to the student-athlete or another person,
 - Serves the student-athlete in an advisory capacity on a matter related to finances, business pursuits, or career management decisions, or

² National Collegiate Athletic Association. *NCAA Recruiting Facts*. Retrieved June 22, 2020, from <http://www.ncaa.org/about/resources/media-center/news/ncaa-student-athlete-participation-hits-450000#:~:text=Participation%20levels%20for%20both%20male,Sponsorship%20and%20Participation%20Rates%20report.>

³ NCAA. *NCAA Recruiting Facts*. Retrieved June 22, 2020, from <https://www.ncaa.org/sites/default/files/Recruiting%20Fact%20Sheet%20WEB.pdf>

⁴ Sunrise review application. Athlete agents.

⁵ USLEGAL. *Uniform Athlete Agent Act Law and Legal Definition*. Retrieved June 3, 2020, from <https://definitions.uslegal.com/u/uniform-athlete-agent-act/#:~:text=An%20athlete%20agent%20is%20an,enter%20into%20an%20agency%20contract.>

⁶ Sunrise review application. Athlete agents.

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- Manages the business affairs of the athlete by providing assistance with bills, payments, negotiating contracts or taxes.

Generally,

[A]n individual shall be ineligible for participation in an intercollegiate sport if he or she ever has agreed (orally or in writing) to be represented by an agent for the purpose of marketing his or her athletic ability or reputation in that sport.⁷

Further,

[A]n agency contract not specifically limited in writing to a sport or particular sports shall be deemed applicable to all sports, and the individual shall be ineligible to participate in any sport.

In fact, just entering into a contract renders a student-athlete ineligible to participate in NCAA-sanctioned athletics.

Athlete agents serve a vital role in securing and negotiating contracts for athletes.⁸ A contract is a legally binding document, and in sports, there are typically three types of contracts that are utilized:

- Professional services (often referred to as standard player contracts),
- Endorsement, and
- Appearance.

Generally, a standard player contract is a “boilerplate” form.⁹ The contracts offered to the athletes are all the same other than the salary and bonus.¹⁰ Once a contract is signed, it binds the athlete to play for the team he or she signs with.

An endorsement contract grants a sponsor the right to use the athlete’s name, image or likeness in connection with advertising the sponsor’s products or services, such as clothing or food products.¹¹

An appearance contract compensates an athlete for appearing at events such as a sports camp or golf tournament.¹²

⁷ NCAA Division I Manual, NCAA Bylaws - Rule 12.3.1.

⁸ USLEGAL.com. *Sports contracts - Basic Principles*. Retrieved June 30, 2020, from <https://sportslaw.uslegal.com/sports-agents-and-contracts/sports-contracts-basic-principles/>

⁹ USLEGAL.com. *Sports contracts - Basic Principles*. Retrieved June 30, 2020, from <https://sportslaw.uslegal.com/sports-agents-and-contracts/sports-contracts-basic-principles/>

¹⁰ USLEGAL.com. *Sports contracts - Basic Principles*. Retrieved June 30, 2020, from <https://sportslaw.uslegal.com/sports-agents-and-contracts/sports-contracts-basic-principles/>

¹¹ USLEGAL.com. *Sports contracts - Basic Principles*. Retrieved June 30, 2020, from <https://sportslaw.uslegal.com/sports-agents-and-contracts/sports-contracts-basic-principles/>

¹² USLEGAL.com. *Sports contracts - Basic Principles*. Retrieved June 30, 2020, from <https://sportslaw.uslegal.com/sports-agents-and-contracts/sports-contracts-basic-principles/>

Athlete agents' commissions for representing athletes vary. Generally, athlete agents earn between 4 and 10 percent of the dollar value of an athlete's contract.¹³ Importantly, some professional leagues such as the National Football League and the National Basketball Association limit athlete agents' commission to not more than three percent of the player's salary.¹⁴

Major League Baseball and the National Hockey League do not have any limitations on athlete agents' commission.¹⁵

There are no formal education or experience requirements to become an athlete agent. However, athlete agents generally possess a college degree, and the top athlete agents possess a master's or law degree.¹⁶

It is not known how many athlete agents are currently practicing in Colorado.

¹³ Chron. *The Average Sports Agent's Commission*. Retrieved June 30, 2020, from <https://work.chron.com/average-sports-agents-commission-21083.html>

¹⁴ Chron. *The Average Sports Agent's Commission*. Retrieved June 30, 2020, from <https://work.chron.com/average-sports-agents-commission-21083.html>

¹⁵ Chron. *The Average Sports Agent's Commission*. Retrieved June 30, 2020, from <https://work.chron.com/average-sports-agents-commission-21083.html>

¹⁶ Work in Sports.com. *Pursuing a Career as a Sports Agent*. Retrieved June 24, 2020, from <https://www.workinsports.com/blog/pursuing-a-career-as-a-sports-agent/#:~:text=Sports%20Agent%20Education,many%20have%20a%20law%20degree.>

Proposal for Regulation

A State of Colorado legislator and the Uniform Law Commission (Applicants) submitted a sunrise application to the Colorado Office of Policy, Research and Regulatory Reform within the Department of Regulatory Agencies for review in accordance with the provisions of section 24-34-104.1, Colorado Revised Statutes. The application identifies registration of athlete agents as the appropriate level of regulation. The application suggests utilizing the Revised Uniform Athlete Agents Act (RUAAA).

The RUAAA was drafted by the National Conference of Commissioners on Uniform State Laws. Among the stated purposes of the RUAAA are

providing enhanced protection for student-athletes and educational institutions, creating a uniform body of agent registration information for use by the state agencies registering agents and simplifying the registration process for agents.¹⁷

The RUAAA requires athlete agents to complete an application for registration. The application requires information, including but not limited to:

- A description of the applicant's formal training as an athlete agent, practical experience as an athlete agent and educational background relating to the applicant's activities as an athlete agent.
- The name(s) of each student-athlete for whom the applicant acted as an athlete agent within five years before the date of the application, or if the athlete is a minor, the name of the parent or guardian of the minor, together with the athlete's last-known team.
- Information detailing if the applicant has pleaded guilty or no contest to, has been convicted of, or has charges pending for a crime involving moral turpitude or which is a felony and, if so, identify:
 - The crime;
 - The law enforcement agency involved; and
 - The date of the conviction and the fine or penalty imposed, if applicable.
- Information related to each state in which the applicant is currently registered as an athlete agent or has applied to be registered as an athlete agent.

Section 6 within the RUAAA highlights circumstances in which an applicant may be denied a registration, which include:¹⁸

- Pledged guilty or no contest to, has been convicted of or has charges pending for a crime involving moral turpitude and which is a felony;

¹⁷ *Revised Uniform Athlete Agents Act (2015) (Last Revised 2019)*, National Conference of State Commissioners on Uniform State Laws (June 2020), p. 2.

¹⁸ *Revised Uniform Athlete Agents Act (2015) (Last Revised 2019)*, National Conference of State Commissioners on Uniform State Laws (June 2020), p. 24.

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- Made a materially false, misleading, deceptive or fraudulent representation in the application for registration or as an athlete agent;
 - Engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity; or
 - Had a registration as an athlete agent suspended, revoked or denied in any state.

Section 7 within the RUAAA states that the regulatory authority over athlete agents may limit suspend, revoke or refuse to renew a registration.¹⁹

The Applicant asserts that utilizing the registration program envisioned under the RUAAA would:

- Enable student-athletes and their families to better understand the competency and track record of each professional representative by relying upon a credible source rather than the representations of the individuals themselves.
- Empower scholastic institutions to work with young athletes to make educated decisions because the RUAAA requires those governed by the law to notify the applicable educational institution prior to initiating contact with an athlete at the school.

¹⁹ *Revised Uniform Athlete Agents Act (2015) (Last Revised 2019)*, National Conference of State Commissioners on Uniform State Laws (June 2020), p. 26.

Summary of Current Regulation

There are a variety of federal and state laws that apply to athlete agents.

Federal Laws and Regulations

The Sports Agent Responsibility and Trust Act (SPARTA) was enacted by Congress in 2004. SPARTA provides protections to student-athletes by prohibiting athlete agents from signing agency contracts by:²⁰

- Providing false or misleading information, or making misleading promises or representations;
- Providing anything of value, such as gifts, cash or loans to the student-athlete or anyone associated with the athlete;
- Failing to disclose in writing to the student-athlete that he or she may lose National Collegiate Athletic Association (NCAA) eligibility after signing an agency contract; or
- Predating or postdating contracts.

The Federal Trade Commission (FTC) provides regulatory oversight of SPARTA, and athlete agents who violate any of the aforementioned protections highlighted above may be in violation of the Federal Trade Commission Act (FTCA). The purpose of the FTCA is to protect businesses and consumers from unfair competition and unfair deceptive acts in the conduct of business.²¹

There are currently two avenues to address violations of SPARTA:²²

- State action taken by the state's attorney general on behalf of the residents of that attorney general's state, or
- Federal action taken by the FTC.

Importantly, if the FTC institutes an action against an athlete agent, SPARTA prohibits a state attorney general from pursuing an action against the athlete agent for the same complaint.

²⁰ USLEGAL.com. *The Sports Agent Responsibility and Trust Act*. Retrieved June 29, 2020, from <https://sportslaw.uslegal.com/the-sports-agent-responsibility-and-trust-act/#:~:text=and%20Trust%20Act-,The%20Sports%20Agent%20Responsibility%20and%20Trust%20Act,to%20an%20agency%20contract%20by%3A&text=Predating%20or%20postdating%20contracts>.

²¹ USLEGAL.com. *The Sports Agent Responsibility and Trust Act*. Retrieved June 29, 2020, from <https://sportslaw.uslegal.com/the-sports-agent-responsibility-and-trust-act/#:~:text=and%20Trust%20Act-,The%20Sports%20Agent%20Responsibility%20and%20Trust%20Act,to%20an%20agency%20contract%20by%3A&text=Predating%20or%20postdating%20contracts>.

²² USLEGAL.com. *The Sports Agent Responsibility and Trust Act*. Retrieved June 29, 2020, from <https://sportslaw.uslegal.com/the-sports-agent-responsibility-and-trust-act/#:~:text=and%20Trust%20Act-,The%20Sports%20Agent%20Responsibility%20and%20Trust%20Act,to%20an%20agency%20contract%20by%3A&text=Predating%20or%20postdating%20contracts>.

Also, under the FTCA, sports agents can be fined up to \$11,000 for violations, as highlighted above, of unfair or deceptive acts.²³

National Collegiate Athletic Association

In April 2020, the NCAA's Board of Governors (Board) supported rule changes to allow student-athletes to receive third-party endorsements both related to or separate from athletics.²⁴ The Board also supports compensation for other student-athlete opportunities such as social media, businesses they have started and personal appearances.²⁵

The Board directed all three collegiate athletic divisions to consider appropriate rule changes. The divisions are expected to adopt new rules concerning name, image and likeness by January 2021 to take effect in the 2021-2022 academic year.²⁶ That is, the new rules that divisions adopt will be inclusive of names of athletes, images or pictures of athletes, and any likenesses of athletes, such as a social media information.

The proposed rule changes would permit student-athletes to identify themselves by sport and school; however, the use of conference or school logos is not permitted.²⁷

²³ USLEGAL.com. *The Sports Agent Responsibility and Trust Act*. Retrieved June 29, 2020, from <https://sportslaw.uslegal.com/the-sports-agent-responsibility-and-trust-act/#:~:text=and%20Trust%20Act-,The%20Sports%20Agent%20Responsibility%20and%20Trust%20Act,to%20an%20agency%20contract%20by%3A&text=Predating%20or%20postdating%20contracts>.

²⁴ NCAA. *Board of Governors Moves Toward Allowing Student-Athlete Compensation for Endorsements or Promotions*. Retrieved on June 12, 2020, from <http://www.ncaa.org/about/resources/media-center/news/board-governors-moves-toward-allowing-student-athlete-compensation-endorsements-and-promotions>

²⁵ NCAA. *Board of Governors Moves Toward Allowing Student-Athlete Compensation for Endorsements or Promotions*. Retrieved on June 12, 2020, from <http://www.ncaa.org/about/resources/media-center/news/board-governors-moves-toward-allowing-student-athlete-compensation-endorsements-and-promotions>

²⁶ NCAA. *Board of Governors Moves Toward Allowing Student-Athlete Compensation for Endorsements or Promotions*. Retrieved on June 12, 2020, from <http://www.ncaa.org/about/resources/media-center/news/board-governors-moves-toward-allowing-student-athlete-compensation-endorsements-and-promotions>

²⁷ NCAA. *Board of Governors Moves Toward Allowing Student-Athlete Compensation for Endorsements or Promotions*. Retrieved on June 12, 2020, from <http://www.ncaa.org/about/resources/media-center/news/board-governors-moves-toward-allowing-student-athlete-compensation-endorsements-and-promotions>

The Colorado Regulatory Environment

Currently, Colorado does not license, certify or register athlete agents. However, in 2008, the Colorado General Assembly created a registration program under which athlete agents were required to register with the Division of Professions and Occupations (DPO) prior to operating as an athlete agent. After the implementation of the program, only two athlete agents registered with DPO.

In 2010, via House Bill 10-1128, the General Assembly repealed the athlete agent registration program. Although the General Assembly repealed the registration requirement, other safeguards remained in place. Section 23-16-101, *et seq.*, Colorado Revised Statutes, continues to provide protections to student-athletes. The statute, among other things, details the required form of contracts. Contracts must contain the following:²⁸

- 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,
- The name of any person who will be compensated because the student-athlete signed the agency contract,
- A description of any expenses that the student-athlete agrees to reimburse,
- A description of the services to be provided to the student-athlete,
- The duration of the contract, and
- The date of execution.

Also, the statute requires contracts to contain the following in boldface type in capital letters:²⁹

IF YOU SIGN THIS CONTRACT: YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT ATHLETE IN YOUR SPORT; 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 YOU MAY CANCEL THIS CONTRAACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.

A contract that does not include the referenced language is voidable by the student-athlete.³⁰ If the student-athlete voids the contract, he or she is not required to pay any consideration received from the athlete agent as an inducement to enter into the contract.³¹

²⁸ §§ 23-16-209(b)(1-6), C.R.S.

²⁹ § 23-16-209(c)(1-3), C.R.S.

³⁰ § 23-16-209(d), C.R.S.

³¹ § 23-16-209(d), C.R.S.

Prohibited conduct related to athlete agents includes:³²

- Giving any materially false or misleading information or making a materially false promise or representation,
- Furnishing anything of value to a student-athlete before the student-athlete enters into the agency contract, or
- Furnishing anything of value to any individual other than the student-athlete or another agent.

An athlete agent who violates the above is guilty of a class 2 misdemeanor for a first offense, and is guilty of a class 6 felony for a second or subsequent offense.³³

Also, courts may impose civil penalties of not more than \$25,000 for violations of the statute.³⁴ Moneys collected are credited to the General Fund.³⁵

In 2020, the General Assembly passed Senate Bill 20-123, which authorizes student-athletes to earn compensation from the use of the student-athlete's name, image or likeness. Senate Bill 20-123 is effective on January 1, 2023.

Senate Bill 20-123, among other things, authorizes student-athletes to enter into an advisor contract with an athlete advisor. An advisor contract is defined as an agreement in which a student-athlete authorizes a person to negotiate or solicit, on behalf of the student-athlete, compensation for the use of the student's name, image or likeness.³⁶

Importantly, an advisor contract does not include a professional sports services contract.³⁷

Senate Bill 20-123 states that institutions of higher education cannot revoke a student-athlete's scholarship if the athlete receives compensation or obtains professional or legal representation for the use of the student's name, image or likeness.

Any student-athlete who enters into a contract with an athlete advisor must disclose the contract to the athletic director of the student's school within 72 hours after entering into the contract or before the next scheduled athletic event in which the student-athlete may participate.³⁸

³² §§ 23-16-213(a), C.R.S.

³³ §23-16-214, C.R.S.

³⁴ §23-16-216, C.R.S.

³⁵ §23-16-216, C.R.S.

³⁶ § 23-16-301(1)(a), C.R.S.

³⁷ § 23-16-301(1)(a)(I), C.R.S.

³⁸ § 23-16-301(3)(b), C.R.S.

Regulation in Other States

According to the sunrise application, 42 states currently regulate athlete agents. In an attempt to understand the regulatory environment in other states, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) staff contacted regulators in several states contiguous to Colorado: Arizona, Kansas, New Mexico, Nebraska, Oklahoma, Utah and Wyoming.

COPRRR staff confirmed that Kansas, New Mexico, Nebraska, Oklahoma, Utah and Wyoming utilize the Uniform Athlete Agent Act or Revised Uniform Athlete Agent Act, which creates a registration program for athlete agents.

Importantly, Arizona repealed its registration program in 2017.

Oklahoma also requires athlete agents to secure a \$50,000 surety bond.

Additionally, all of the aforementioned state, except Arizona, have a registration program in place. COPRRR staff attempted to contact the referenced states to determine the number and types of complaints that were reported against athlete agents. Each of the states that responded reported there were zero complaints and disciplinary actions imposed on athlete agents in that past few years. New Mexico did not respond to requests for information.

Analysis and Recommendations

Public Harm

The first sunrise criterion asks:

Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety, or welfare of the public, and whether the potential for harm is easily recognizable and not remote or dependent on tenuous argument.

Before moving forward in the analysis of harm concerning athlete agents, it is important to identify what constitutes harm to the public. Athlete agents are individuals who enter into contracts with student-athletes, or directly or indirectly, recruit, or solicit student-athletes to enter into contracts.³⁹ By entering into a contract with an athlete agent, the athlete agent represents the student-athlete in situations such as contract negotiations and endorsements.

There are a variety of situations where athlete agents could harm student-athletes, such as entering into a contract with a student-athlete that compromises their eligibility to play in collegiate sports, or providing financial assistance (e.g., money, cars or jewelry), which could compromise their eligibility to compete in college athletics.

In order to determine whether the regulation of athlete agents is necessary in Colorado, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) staff requested that the sunrise applicant provide specific examples of harm, which are highlighted below, accompanied by COPRRR's analysis.

Example 1

In 2010, an Entertainment and Sports Programming Network (ESPN) article indicated that the National Collegiate Athletic Association (NCAA) interviewed several University of North Carolina (UNC) football players concerning interactions with athlete agents. Specifically, the investigation focused on whether athlete agents provided gifts or extra benefits to the football players, such as travel, rent payments and jewelry.⁴⁰

³⁹ USLEGAL. *Uniform Athlete Agent Act Law and Legal Definition*. Retrieved June 3, 2020, from <https://definitions.uslegal.com/u/uniform-athlete-agent-act/#:-:text=An%20athlete%20agent%20is%20an,enter%20into%20an%20agency%20contract>.

⁴⁰ Espn.com. *Sources: NCAA Probing UNC Football*. Retrieved August 20, 2020, from <https://www.espn.com/college-football/news/story?id=5384232>

The article also states that the NCAA inquired into a UNC football player who was driving a former player's (a current National Football League (NFL) player) vehicle.⁴¹

Analysis

This example did not specify whether any inappropriate actions by athlete agents were identified during the NCAA investigation, so it is unclear if any student-athletes were harmed due to inappropriate actions of athlete agents.

Additionally, the article references that a current UNC football player may have been seen driving a former UNC player's vehicle. Although the article did not reference whether this allegation was substantiated, it is not associated with an athlete agent. The article does not reference whether the NFL player was representing the current UNC football player as an athlete agent or if they were friends.

Information provided for this example does not demonstrate the need to formally regulate athlete agents in Colorado.

Example 2

In 2010, an ESPN article reported that college football players from several different colleges, including the University of Alabama, the University of South Carolina, UNC, and Georgia attended a house party of a current NFL player and a nightclub in Miami, Florida. The article stated that the NCAA was investigating the party to determine, among other things, if athlete agents and financial advisors financed the trips of the football players.⁴²

Analysis

The example highlighted above does not demonstrate athlete agents harming student-athletes. Instead, the article stated that the NCAA was investigating the situation. Since the allegations are not substantiated in the article, there is no evidence to determine whether athlete agents did anything wrong, this example does not demonstrate the need to regulate athlete agents in Colorado.

⁴¹ Espn.com. Sources: NCAA Probing UNC Football. Retrieved August 20, 2020, from <https://www.espn.com/college-football/news/story?id=5384232>

⁴² Espn.com. Report: Trips to Miami under Scrutiny. Retrieved August 20, 2020, from <https://www.espn.com/college-football/news/story?id=5402211>

Example 3

In 2010, an ESPN article reported that the NCAA was conducting an investigation into UNC football players for receiving gifts from athlete agents. The investigation determined that three players received jewelry and travel accommodations from an athlete agent. One of the football players was released from the team, and the other two players were deemed permanently ineligible to participate in college football.

Analysis

This example illustrates an instance where an athlete agent harmed three UNC football players by furnishing them with jewelry and travel accommodations. The sunrise applicant requested the creation of a registration program for athlete agents utilizing the Revised Uniform Athlete Agents Act (RUAAA). Section 14 within the RUAAA highlights numerous prohibited activities for athlete agents, including those described in the ESPN article. The RUAAA also authorizes the regulator to impose criminal and civil remedies.

Example 4

In 2017, *The News & Observer*, a North Carolina newspaper, reported that an athlete agent in North Carolina was sentenced to 30 months' probation and required to pay \$5,000 in fines. The athlete agent acknowledged giving UNC football players approximately \$24,000 in cash as well as travel accommodations to persuade them to sign with his sports agency while they were still college players.⁴³

Analysis

This example demonstrates an instance where the actions of an athlete agent caused harm to student-athletes. The example clearly shows that the athlete agent provided money and travel accommodations to student-athletes, which is against NCAA rules. In order to maintain their college eligibility, student-athletes are prohibited from accepting anything of value or signing a contract with an athlete agent. Presumably, then, the student-athletes lost their eligibility.

Example 5

In 2010, two ESPN articles stated that the NCAA investigated the actions of an athlete agent who was allegedly requesting payment for a star football player to

⁴³ The News & Observer. *Agent Pleads Guilty to Giving Money to UNC Football Players*. Retrieved August 20, 2020, from <https://www.newsobserver.com/sports/college/acc/unc/article145007249.html>

attend school. The athlete agent reportedly was considering asking Mississippi State to pay \$180,000 for the star athlete to play at the university. The money, if received, was reportedly going to the star athlete's father.⁴⁴

A subsequent article in 2010 asserts that after an investigation by the NCAA, it was determined that the father and an athlete agent attempted to "sell" the services of a star athlete to colleges. The NCAA also determined that the star athlete was unaware of the actions of his father and the athlete agent, so no discipline would be taken against the athlete.⁴⁵

Analysis

This example does not demonstrate that the athlete agent harmed the student-athlete. The NCAA determined that the student-athlete was unaware of the actions of his father and the athlete agent. Also, if the NCAA would have determined that the star athlete was formally represented by the athlete agent, the star athlete would have been deemed ineligible.

Since no harm to the student-athlete occurred, implementation of a regulatory program for athlete agents is unnecessary. However, this example illustrates that there is a potential for harm. If the student-athlete would have known about the situation, that knowledge could have compromised his eligibility to participate in sports. Regardless, the athlete agent's willingness to break the rules creates potential harm to student athletes.

Example 6

In 2007, an ESPN article reported that a college football player at the University of Southern California (USC) received approximately \$280,000 from an athlete agent. The athlete agent provided the player and his family cash, travel expenses and a home. The NCAA investigated the situation for more than four years, and the NCAA imposed sanctions on USC. In fact, USC was required to vacate the final 14 wins of the athlete's career. USC also lost 30 scholarships for three years. The football player also gave back his Heisman Trophy, which is awarded to the best college football player each year.⁴⁶

⁴⁴ Espn.com. *Cash Sought for Cam Newton*. Retrieved August 20, 2020, from <https://www.espn.com/college-football/news/story?id=5765214>

⁴⁵ Espn.com. *NCAA Spins Fairy-Tale Fodder*. Retrieved August 20, 2020, from https://www.espn.com/espn/columns/story?columnist=wojciechowski_gene&sportCat=ncf&id=5872192

⁴⁶ Espn.com. *Report: Marketer Claims Bush Received \$285K in Benefits at USC*. Retrieved August 20, 2020, from <https://www.espn.com/college-football/news/story?id=3056397>

Analysis

This example demonstrates the harm that the athlete agent caused a college football program and the athlete. Clearly, both the student-athlete and the university were adversely affected by the actions of the athlete agent. In this instance, the implementation of a regulatory program would enable the regulator to revoke or otherwise discipline the athlete agent's registration, which could prevent him from practicing.

Example 7

In 2018, a Yahoo! Sports news article reported that a basketball player's legal guardian accepted \$20,000 from boosters and a consultant for a major shoe company to attend the University of Kansas rather than the University of Maryland.⁴⁷

Analysis

This example does not detail the illicit actions of athlete agents; instead, it highlights the actions of boosters who wanted the basketball player to attend the University of Kansas rather than the University of Maryland. Since athlete agents were not identified as harming student-athletes in this article, it does not demonstrate the need to regulate athlete agents.

Example 8

In 1995, an ESPN article reported that a University of Alabama football player signed with an athlete agent. After an investigation, the NCAA cited the university for "lack of institutional control." The university was given, among other things, a one-year ban on playing in a bowl game and a two-year reduction in total scholarships from 85 to 81.⁴⁸

Analysis

This example demonstrates that the actions of an athlete agent created harm. The implementation of a regulatory program may serve to prevent the athlete agent from practicing.

Example 9

In 2014, a *Sports Illustrated* article reported that a Baylor University football player was ruled permanently ineligible by the NCAA for accepting improper

⁴⁷ Sports.yahoo.com. *What do New Charges in College Hoops Corruption Case Mean?* Retrieved August 20, 2020, from <https://sports.yahoo.com/new-charges-college-hoops-corruption-case-mean-182225446.html>

⁴⁸ Espn.com. *ESPN College Football*. Retrieved August 20, 2020, from <http://static.espn.go.com/ncf/s/2001/1126/1284780.html>

benefits. The football player accepted benefits from a family friend such as a place to live, food and financial support. Importantly, the family friend was not serving as the football player's athlete agent or advisor.⁴⁹

Analysis

This example does not demonstrate any harm to the student-athlete by an athlete agent. In fact, the newspaper article did not reference any actions of an athlete agent, it only references the family friend who assisted the student-athlete. As such, this example does not demonstrate the need for the regulation of athlete agents.

Four of the 10 cases provided for this sunrise review demonstrate instances where athlete agents harmed student-athletes. Importantly, all of the aforementioned cases were from other states; none were in Colorado. Also, most of these instances are fairly dated—one was in the early 1990s, but the majority occurred in the early 2000s.

In a further attempt to determine whether athlete agents cause harm in Colorado, COPRRR staff reached out to numerous colleges and universities. The athletic directors at the University of Colorado and Colorado State University responded to COPRRR's request for information concerning athlete agents.

Also, COPRRR staff contacted the Office of Attorney Regulation Counsel within the Judicial Department and the Attorney General's Office, Consumer Protection Section in an attempt to identify instances of student-athlete harm in Colorado by athlete agents.

Interviews with the referenced entities did not highlight any instances where student-athletes were harmed by athlete agents.

Also, COPRRR staff contacted the Division of Professions and Occupations (Division). Between 2008 and 2010, the Director of the Division provided regulatory oversight of athlete agents. During this period, there were only two athlete agents registered, and there were zero complaints or disciplinary actions imposed.

Since there is no evidence of harm in Colorado, and it appears that there are limited cases of harm outside Colorado, the need to provide regulatory oversight for athlete agents is questionable.

Need for Regulation

The second sunrise criterion asks:

⁴⁹ Si.com. *The Saga of 'Salsa Nacho': How the Once-Homeless Baylor RB found joy*. Retrieved August 20, 2020, from <https://www.si.com/college/2014/12/29/baylor-runningback-silas-nacita-homeless-salsa-nacho>

Whether the public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional or occupational competence.

This criterion addresses the proposition of whether the state should require a certain level of education and/or impose a requirement that athlete agents acquire a certain level of education and/or pass an examination before practicing in Colorado.

This sunrise review has determined that there is insufficient evidence to conclude that the unregulated practice of athlete agents harms student-athletes. As such, there is insufficient evidence to justify requiring athlete agents to possess a minimum level of education or pass an examination in order to practice in Colorado. As a result, the implementation of minimum requirements could potentially impose an unnecessary barrier to entry for professionals.

Alternatives to Regulation

The third sunrise criterion asks:

Whether the public can be adequately protected by other means in a more cost-effective manner.

Public protection for student-athletes related to athlete agents could potentially be realized in a more cost-effective manner than the imposition of a regulatory program. Since there have not been any issues identified during the course of this sunrise review, the most appropriate and cost-effective option is to refrain from implementing a new regulatory program for athlete agents. The current statute, section 23-16-101, *et seq.*, Colorado Revised Statutes, does not require athlete agents to register with the State of Colorado. However, the statute provides protections for student-athletes. The statute also details specific prohibited conduct related to athlete agents and details potential civil and criminal penalties for violations of the statute. Thus, the status quo is a viable alternative to the regulation proposed by the sunrise applicant.

Additionally, since the majority (not all) of athlete agents are attorneys, another option to provide protection to consumers may be to require that all athlete agents be licensed attorneys. Doing so would enable all athlete agents to practice on their existing license; any violations incurred while practicing as an athlete agent would adversely affect their current license. However, requiring all athlete agents in Colorado to be licensed attorneys has limitations. Most notably, the implementation of this requirement would limit the profession to persons who are licensed attorneys.

The absence of student-athlete harm identified in Colorado by athlete agents calls into question the need to require all athlete agents to be licensed attorneys.

Collateral Consequences

The fourth sunrise criterion asks:

Whether the imposition of any disqualifications on applicants for licensure, certification, re-licensure, or re-certification based on criminal history serves public safety or commercial or consumer protection interests.

The sunrise application delineated that criminal history should be utilized in determining an athlete agent's eligibility to practice in Colorado. The sunrise application states that the regulatory body may refuse to issue a registration if the regulator determines that the applicant has engaged in conduct that significantly, adversely reflects on the applicant's fitness to act as an athlete agent.

Importantly, the examples of harm identified for this sunrise review contained few substantiated instances concerning criminal conduct that harmed consumers.

As such, the imposition of a background check to identify issues that would disqualify athlete agents from practicing in Colorado appears to be an unnecessary requirement.

Conclusion

The sunrise application requested registration for athlete agents. The application suggests utilizing the Revised Uniform Athlete Agents Act (RUAAA), which was drafted by the National Conference of Commissioners on Uniform State Laws for the purpose of

providing enhanced protection for student-athletes and educational institutions, creating a uniform body of agent registration information for use by the state agencies registering agents and simplifying the registration process for agents.⁵⁰

Currently, there are safeguards in place to provide protections to student-athletes related to athlete agents. The Sports Agent Responsibility and Trust Act (SPARTA) provides protections to student-athletes by prohibiting athlete agents from signing agency contracts by:⁵¹

- Providing false or misleading information, or making or misleading promises or representations;
- Providing anything of value, such as gifts, cash or a loan to the student-athlete or anyone associated with the athlete;
- Failing to disclose in writing to the student-athlete that he or she may lose NCAA eligibility after signing an agency contract; or
- Predating or postdating contracts.

The Federal Trade Commission (FTC) provides regulatory oversight of SPARTA, and athlete agents who violate any of the aforementioned protections may be in violation of the Federal Trade Commission Act (FTCA). The purpose of the FTCA is to protect businesses and consumers from unfair competition and unfair deceptive acts in the conduct of business.⁵²

In an attempt to identify student-athlete harm related to athlete agents, COPRRR staff contacted a number of organizations, including: the Attorney General's Office, Consumer Protection Section; the Office of Attorney Regulation Counsel within the Judicial

⁵⁰ *Revised Uniform Athlete Agents Act (2015) (Last Revised 2019)*, National Conference of State Commissioners on Uniform State Laws (June 2020), p. 2.

⁵¹ USLEGAL.com. *The Sports Agent Responsibility and Trust Act*. Retrieved June 29, 2020, from <https://sportslaw.uslegal.com/the-sports-agent-responsibility-and-trust-act/#:~:text=and%20Trust%20Act-,The%20Sports%20Agent%20Responsibility%20and%20Trust%20Act,to%20an%20agency%20contract%20by%3A&text=Predating%20or%20postdating%20contracts>.

⁵² USLEGAL.com. *The Sports Agent Responsibility and Trust Act*. Retrieved June 29, 2020, from <https://sportslaw.uslegal.com/the-sports-agent-responsibility-and-trust-act/#:~:text=and%20Trust%20Act-,The%20Sports%20Agent%20Responsibility%20and%20Trust%20Act,to%20an%20agency%20contract%20by%3A&text=Predating%20or%20postdating%20contracts>.

Department; the University of Colorado and Colorado State University Athletic Departments; and Division of Professions and Occupations staff, who provided regulatory oversight of the athlete agent program prior to being sunsetted by the General Assembly in 2010. Each of the referenced organizations stated that it had not received any complaints against athlete agents in the past few years. Therefore, it is reasonable to conclude that athlete agents are not causing widespread harm to Colorado consumers who utilize their services.

In sum, implementing a program to provide regulatory oversight of athlete agents is not necessary. Although harm was found in a few cases, in the majority of cases, no harm could not be attributed to the specific actions of athlete agents. It should also be noted that none of the cases reviewed occurred in Colorado. Consequently, during the course of this sunrise review, COPRRR staff was unable to identify issues related to harm in Colorado. Perhaps there were no issues related to athlete agents harming student-athletes in Colorado due to the existence of section 23-16-101, *et seq.*, Colorado Revised Statutes. This statute, among other things, details prohibited conduct related to athlete agents and details potential civil and criminal penalties for violations of the statute.

As a result, the limited examples of harm to the public in other states and the absence of harm in Colorado do not justify regulatory oversight in Colorado.

Recommendation - Do not regulate athlete agents.