

SESSION OF 2020

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2521

As Amended by House Committee on Judiciary

Brief*

HB 2521, as amended, would enact the Revised Uniform Athlete Agents Act (RUAAA) and repeal the Uniform Athlete Agents Act (UAAA). Throughout the RUAAA, provisions from the UAAA would be continued, reorganized, or updated without substantive changes. The following highlights substantive changes or additions to UAAA provisions contained in each section of the RUAAA.

Definitions (Section 2)

Most definitions from the UAAA would be continued in substantially similar form in the RUAAA. The definitions of “athlete agent,” “person,” and “student athlete” would be updated. Definitions for “recruit or solicit” and “sign” would be added. The UAAA definition of “contact” would be removed.

Secretary of State’s Authority (Section 3)

A provision from the UAAA stating the Secretary of State is appointed as an athlete agent’s agent for service of process would be continued in the RUAAA, but additional provisions from the UAAA specifying how service of process is to be made on the Secretary of State against an athlete agent would not be included in the RUAAA.

UAAA provisions granting the Secretary of State rules and regulations authority to carry out the provisions of the act

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

and providing that administrative proceedings pursuant to the act would be conducted in accordance with the Kansas Administrative Procedure Act would be reworded and moved from other sections of the UAAA to this section of the RUAAA.

Registration Required (Section 4)

A provision from the UAAA requiring athlete agent registration would be continued in the RUAAA in substantially similar form, with some re-wording to clarify what act begins a seven-day deadline to apply for registration in some cases.

Application for Registration (Section 5)

Provisions from the UAAA regarding the required contents of applications for registration would be continued in the RUAAA, with the addition of the following required information:

- Date and place of birth of the applicant;
- Applicant's work and mobile telephone numbers;
- Means of communicating electronically with the applicant;
- Certain details regarding the applicant's business or employer;
- Social media accounts with which the applicant or applicant's business is affiliated;
- Additional details regarding the applicant's business or occupation, and any professional or occupational license, registration, or certification held by the applicant;

- Information regarding any person who directly or indirectly holds an equity interest of 5 percent or greater in the athlete agent's business, if not a corporation;
- Description of the status of any application by the applicant or other persons named in the application for various licenses, including any disciplinary action regarding such licenses;
- Whether the applicant or other persons named in the application have pending charges, have plead guilty or no contest to, or have entered into a diversion agreement for certain crimes, as well as additional details regarding such offense;
- Whether the applicant or other persons named in the application have been a defendant or respondent in a civil proceeding within the 15 years preceding the date of application;
- Whether the applicant or other persons named in the application have been adjudicated bankrupt or was an owner of a business adjudicated bankrupt within the 10 years preceding the date of application;
- Each instance in which the conduct of the applicant or other persons named in the application resulted in imposition of a sanction, suspension, or declaration of ineligibility to participate in a professional athletic event, or a sanction on an educational institution;
- Each state in which the applicant is currently registered or has applied to be registered as an athlete agent;
- If the applicant is certified or registered by a professional league or players association, then

certain details regarding such certification or registration; and

- Any additional information required by the Secretary of State.

The RUAAA would clarify the Secretary of State is to prescribe a form for registration in rules and regulations.

The RUAAA would adjust procedures from the UAAA regarding the application for registration by an individual registered as an athlete agent in another state. Such individual could apply for registration in Kansas by submitting to the Secretary of State a copy of the application for registration in the other state; a statement identifying any material change in the information on the application or certifying there is no material change in the information, signed under penalty of perjury; and a copy of the certificate of registration from the other state.

The Secretary of State would be required to issue a certificate of registration to such individual if the Secretary of State determines the application and registration requirements of the other state are substantially similar or more restrictive than the RUAAA, and the individual's registration has not been revoked or suspended and no action involving the individual's conduct as an athlete agent is pending in any state.

The Secretary of State would be required to cooperate with national organizations concerned with athlete agent issues and similar agencies in other states to develop a common registration form and to determine which states have laws that are substantially similar to or more restrictive than the RUAAA. The Secretary of State also would be required to exchange certain information with these organizations and agencies.

Issuance of Certificate (Section 6)

Provisions from the UAAA regarding the issuance of a certificate of registration by the Secretary of State would be continued in the RUAAA, with some adjustments to reflect the changes in the registration process and form and to allow the Secretary of State to consider the additional information regarding criminal charges required by the RUAAA.

Disciplinary Actions (Section 7)

A provision from the UAAA allowing the Secretary of State to take certain disciplinary actions regarding an individual's registration would be continued in the RUAAA, with the addition of "limit" as an action that may be taken regarding the registration of an individual who has registered under the full process. The RUAAA would separate out the actions that may be taken (suspension or revocation) regarding the registration of an individual who has registered under the process for those already registered in another state.

Temporary Certificate (Section 8)

A provision from the UAAA allowing the Secretary of State to issue a temporary certificate of registration as an athlete agent would be continued in the RUAAA in substantially similar form.

Application Fee (Section 9)

Provisions from the UAAA establishing \$500 fees for registration or renewal of registration as an athlete agent would be continued in the RUAAA in substantially similar form.

Contract Requirements (Section 10)

Provisions from the UAAA governing the contents of agency contracts would be continued in the RUAAA with the following modifications:

- Require the contract include a statement that the athlete agent is registered as an athlete agent in Kansas and a list of any other states where the athlete agent is registered as such;
- Add language regarding the notice that must be given to an athletic director and the effect of cancellation to the required conspicuous notice in boldface type;
- Require an agency contract be accompanied by a separate record signed by the student athlete (or parent or guardian) acknowledging that signing the contract may result in the loss of eligibility to participate in the athlete's sport; and
- Add a provision requiring an agency contract be signed by a parent or guardian of the student athlete, if the student athlete is a minor, and other provisions throughout the RUAAA would be adjusted to reflect this.

Notices to Educational Institution (Section 11)

Provisions from the UAAA requiring the athlete agent and student athlete to provide certain notice to an educational institution would be continued in the RUAAA, and the name and contact information of the athlete agent would be added to the information the student athlete must provide in certain circumstances. Additionally, the following notice provisions would be added in the RUAAA:

- An athlete agent would be required to notify the athletic director of an educational institution of the

existence of an agency contract with a student athlete if the athlete subsequently enrolls at the institution, no later than 72 hours after the agent knew or should have known the athlete enrolled;

- An athlete agent would be required to notify an educational institution of the agent's relationship with a student athlete within 10 days of the student athlete's enrollment at the institution if the athlete receives an athletic scholarship from the institution and the agent knows or should have known about the enrollment, and:
 - The relationship was motivated in whole or in part by the intention of the agent to recruit or solicit the athlete to enter into an agency contract in the future; or
 - The athlete agent directly or indirectly recruited or solicited the athlete to enter an agency contract before the enrollment;
- An athlete agent would be required to give notice in a record to the athletic director of any educational institution where a student athlete is enrolled before the agent communicates or attempts to communicate with the athlete (or the minor athlete's parent or guardian) to influence the athlete to enter into an agency contract, or with another individual to have that individual influence the athlete for the same purpose;
- An athlete agent would be required to give notice in a record to the athletic director of any educational institution where an athlete is enrolled if such athlete or an individual on behalf of the athlete communicated or attempts to communicate with the agent, and such notification would have to be made no later than 10 days after the communication or attempt to communicate; and

- An educational institution that becomes aware of a violation of the RUAAA by an athlete agent would be required to notify the Secretary of State and any professional league or payers association that the institution is aware the athlete agent is registered with of such violation.

Contract Cancellation (Section 12)

Provisions from the UAAA allowing a student athlete to cancel an agency contract within 14 days of signing the contract and governing such cancellations would be continued in the RUAAA in substantially similar form, with the addition of allowing a parent or guardian to cancel a contract if the student athlete is a minor.

Record Retention (Section 13)

A provision from the UAAA requiring retention of certain records for five years by an athlete agent would be continued in the RUAAA in substantially similar form, with the addition of a requirement that the athlete agent create the required records.

Prohibited Conduct (Section 14)

The UAAA provision creating and defining the crime of “criminal conduct by an athlete agent” would be restructured in the RUAAA and the following additional changes would be made:

- Remove the title of the crime;
- Adjust the required intent;
- Modify an element prohibiting furnishing anything of value to the student athlete to require that this action “may result in loss of the athlete’s eligibility

to participate in the athlete's sport" and to provide an exception if the athlete agent provides specified notice to the athletic director within 72 hours of giving the thing of value and if the athlete (or parent or guardian) acknowledges in a record that receipt of the thing of value may result in loss of eligibility; and

- Clarify an element prohibiting the initiation of contact.

A separate provision from the UAAA allowing the Secretary of State to assess a civil penalty not to exceed \$25,000 for a violation of the act would be moved to this section of the RUAAA and a provision allowing the Attorney General to bring a civil action at the request of the Secretary of State to recover such penalty would be removed.

Action for Damages (Section 15)

Civil remedy provisions from the UAAA would be revised in the RUAAA. Under the RUAAA, an educational institution or student athlete could bring an action for damages against an athlete agent if the institution or athlete is adversely affected by an act or omission of the agent that violates the act. The RUAAA would specify that "adversely affected" means the institution or student athlete enrolled at the institution is suspended or disqualified from participation in a specified interscholastic or intercollegiate sports event or suffers financial damage. The RUAAA would allow a prevailing plaintiff in an action under this section to recover actual, punitive or other exemplary damages, costs, and reasonable attorney fees. An agent found liable would forfeit any right of payment for anything of benefit or value provided to the athlete and would be required to refund any consideration paid to the agent by or on behalf of the athlete.

Uniform Athlete Agents Fee Fund (Section 16)

The RUAAA would create the Uniform Athlete Agents Fee Fund (Fund), administered by the Secretary of State, to be used for the expenses incurred for the performance of the duties and functions of the Secretary of State under the RUAAA. Fees, civil penalties, and other moneys received under the RUAAA would be remitted to the State Treasurer to be credited to the Fund. The bill would direct that all moneys and liabilities from the Athlete Agent Registration Fee Fund (created by the UAAA) would be transferred to the Fund on July 1, 2020, and the Athlete Agent Registration Fee Fund would then be abolished.

Other Provisions (Sections 17-19)

Like the UAAA, the RUAAA would include uniformity (Section 17) and severability (Section 19) provisions. The RUAAA also would add a provision specifying the RUAAA's interaction with the Electronic Signatures in Global and National Commerce Act (Section 18).

Background

Kansas enacted the UAAA in 2003. The UAAA has been enacted in 42 states. Seven states have enacted the RUAAA, with legislation pending in eight states (including Kansas).

The bill was introduced by the House Committee on Judiciary at the request of Representative Patton on behalf of the Uniform Law Commission (ULC).

In the House Committee hearing, a representative of the ULC testified in support of the bill, stating the bill would modernize Kansas' athlete agent law.

No other testimony was provided.

The House Committee amended the bill to remove an immunity provision for educational institutions and to make technical corrections.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Secretary of State indicates enactment of the bill would have no fiscal impact on agency operations.