

MILLER-AYALA ATHLETE AGENTS ACT

BUSINESS AND PROFESSIONS CODE DIVISION 8 SPECIAL BUSINESS REGULATIONS CHAPTER 2.5 ATHLETE AGENTS

ARTICLE 1 GENERAL PROVISIONS SECTION 18895-18895.2

Definitions:

- (a) "Agent contract" means any contract or agreement pursuant to which a person authorizes or empowers an athlete agent to negotiate or solicit on behalf of the person with one or more professional sports teams or organizations for the employment of the person by one or more professional sports teams or organizations, or to negotiate or solicit on behalf of the person for the employment of the person as a professional athlete.
- (b) "Athlete agent" means any person who, directly or indirectly, recruits or solicits an athlete to enter into any agent contract, endorsement contract, financial services contract, or professional sports services contract, or for compensation procures, offers, promises, attempts, or negotiates to obtain employment for any person with a professional sports team or organization or as a professional athlete.

"Athlete agent" does not include:

- A person licensed as an attorney, dealer in securities, financial planner, insurance agent, real estate broker or sales agent, or tax consultant, or other professional person, when the professional person offers or provides the type of services customarily provided by that profession, except and solely to the extent that the professional person also recruits or solicits an athlete to enter into any agent contract, endorsement contract, or professional sports services contract, or for compensation procures, offers, promises, attempts, or negotiates to obtain employment for any person with a professional sports team or organization or as a professional athlete.
 - Any person acting solely on behalf of a professional sports team or organization.
 - A talent agency, unless that (i) directly or indirectly recruits or solicits a student athlete to enter into an agent contract, endorsement contract, financial services contract, or professional sports services contract, or (ii) for compensation, procures, offers, promises, attempts, or negotiates to obtain employment for any person to perform on-field play with a professional sports team or organization.
 - An individual acting as an athlete agent solely for his or her spouse, child, foster child, ward, or grandchild.
- (c) "Employment as a professional athlete" includes employment pursuant to an endorsement contract or a professional sports services contract.

- (d) "Endorsement contract" means any contract or agreement pursuant to which a person is employed or receives remuneration for any value or utility that the person may have because of publicity, reputation, fame, or following obtained because of athletic ability or performance.
- (e) "Financial services" means the making or execution of an investment or other financial decision, or counseling as to a financial decision.
- (f) "Negotiate" includes any contact on behalf of any athlete with a professional sports team or organization or on behalf of any person with any other person who employs or potentially may employ the person as a professional athlete, regardless of whether the contact is made in person, in writing, electronically, through representatives or employees, or in any other manner. "Negotiate" also includes being present during any discussion of an endorsement contract or professional sports services contract with representatives of the professional sports team or organization or potential or actual employer.
- (g) "Person" means any individual, company, corporation, association, partnership, limited liability company, or their agents or employees.
- (h) "Professional sports services contract" means any contract or agreement pursuant to which a person is employed or agrees to render services as a player on a professional sports team or organization or as a professional athlete.
- (i) "Student athlete" means any individual admitted to or enrolled as a student, in an elementary or secondary school, college, university, or other educational institution if the student participates, or has informed the institution of an intention to participate, as an athlete in a sports program where the sports program is engaged in competition with other educational institutions.

"Student athlete" does not include:

- Any person who has entered into a valid agent contract, a valid endorsement contract, or a valid professional sports services contract.
- Any student of a college or university whose eligibility to participate in an intercollegiate sport has terminated, as determined by the intercollegiate athletics governing body of which the student's college or university is a member.

ARTICLE 1.5 PUBLIC DISCLOSURE

SECTION 18896-18896.8

Each athlete agent, prior to engaging in the business of athlete agent, shall file information with the California Secretary of State concerning the athlete agent and each individual acting as an athlete agent within a firm, company, or partnership.

Upon making first contact, direct or indirect, with a professional athlete, a student athlete, a student athlete's spouse, parent, foster parent, guardian, sibling, aunt, uncle, grandparent, child, or first cousin, any of the preceding persons for whom a relationship has been established by marriage, or any person residing in the same place as a student athlete, or a representative of any of these persons, an athlete agent, or his or her employee or representative, shall provide that person with a written notification stating:

"This athlete agent has current public-disclosure information on file with the California Secretary of State as required by the Miller-Ayala Athlete Agents Act, Chapter 2.5 (commencing with Section 18895) of Division 8 of the Business and Professions Code, which also includes other protections for athletes. Filing of the required information does not imply approval by the California Secretary of State of the competence of the athlete agent."

The notification shall also include specific instructions on how to obtain the public disclosure information from the Secretary of State.

ARTICLE 2 PROFESSIONAL ATHLETES AND ATHLETE AGENTS

SECTION 18897-18897.5

Every agent contract shall be in writing and shall include a description of the types of services to be performed and a schedule of the fees to be charged under the contract.

A trust fund shall be established when an athlete agent is the recipient of the athlete's salary. An athlete agent who receives any payment on behalf of the athlete shall immediately deposit the payment in a trust fund account maintained by the athlete agent in a state or federally chartered financial institution.

If an athlete agent or athlete agent's representative or employee provides financial services to a professional athlete or student athlete or advises the athlete concerning investment of funds, the athlete agent shall disclose to the athlete any ownership interest the athlete agent, representative or employee has in any entity regarding which the athlete agent, representative or employee is providing financial services or giving advice, and any commission the athlete agent, representative or employee will receive from the athlete's investment.

An athlete agent or his representative or employee may NOT:

- Have an ownership or financial interest in any entity that is directly involved in the same sport as a person with whom the athlete agent has entered into an agreement or agent contract, or for whom the athlete agent is attempting to negotiate an endorsement contract, financial services contract, or professional sports service contract, or for whom the athlete agent provides advice concerning potential or actual employment as a professional athlete.
- Publish or cause to be published any false, fraudulent, or misleading information, representation, notice, or advertisement.

- Give any false information or make any false promises or representations concerning any employment to any person.
- Divide fees with or receive compensation from a professional sports league, team, or other organization or its representatives or employee, or offer or allow any full-time employee of a union or players' association connected with professional sports to own or participate in any of the revenues of the athlete agent.
- Negotiate or enter into any postdated agent contract, endorsement contract or professional sports services contract or any agent contract, endorsement contract or professional sports services contract that purports to or takes effect at a future time.

ARTICLE 3 STUDENT ATHLETES AND EDUCATIONAL INSTITUTIONS

SECTION 18897.6-18897.77

No athlete agent or athlete agent's representative or employee shall, directly or indirectly, offer or provide money or any other thing of benefit or value to a student-athlete.

An athlete agent or his representative or employee may **NOT** make or continue any contact (e.g., in person, in writing, electronically, or in any other manner) with any student athlete, or the student athlete's spouse, parent, foster parent, guardian, grandparent, child, sibling, aunt, uncle, or first cousin (or any of these individuals for whom the relationship has been established by marriage), or any person who resides in the same place as the student athlete, or any representative of any of these persons.

Exceptions:

- An athlete agent or his representative or employee may send a student athlete (or anyone described above) written materials, provided that the athlete agent previously has sent, or simultaneously sends, an identical copy of the materials to the president or other chief administrator of the university to which the student athlete has been admitted or in which the student athlete is enrolled.
- If a student-athlete (or anyone described above) initiates contact with an athlete agent or his representative or employee, the athlete agent, representative or employee may continue the contact and make new contacts with that student-athlete.
 - However, no later than the first regular business day after that person first initiates contact, the athlete agent shall notify in writing the president or other chief administrator of the university to which the student athlete has been admitted or in which the student athlete is enrolled, of that contact. The notification shall describe the nature of the contact.

No athlete agent or his representative or employee shall offer or provide money or anything of benefit or value, including, but not limited to, free or reduced price legal services, to any university or any representative or employee of any such educational institution in return for the referral of any clients or initiation of any contact above.

An athlete agent and a student athlete who enter into an agent contract, endorsement contract or professional sports services contract shall provide written notice of the contract to the president or other chief administrator of the university to which the student athlete has been admitted or is enrolled.

- The athlete agent shall provide the notice in writing within 48 hours of entering into the contract.
- The student athlete shall provide the notice before the student athlete practices for or participates in any intercollegiate sports event or within 72 hours after entering into the contract, whichever occurs first.

Every agent contract, endorsement contract, or professional sports services contract entered into by a student athlete shall contain, in close proximity to the signature of the student athlete, a notice in at least 10-point boldface type stating:

"WARNING TO THE STUDENT ATHLETE: WHEN YOU SIGN THIS CONTRACT, YOU LIKELY WILL IMMEDIATELY AND PERMANENTLY LOSE YOUR ELIGIBILITY TO COMPETE IN INTERSCHOLASTIC OR INTERCOLLEGIATE SPORTS. YOU MUST GIVE THE PRINCIPAL, PRESIDENT, OR OTHER CHIEF ADMINISTRATOR OF YOUR EDUCATIONAL INSTITUTION WRITTEN NOTICE THAT YOU HAVE ENTERED INTO THIS CONTRACT WITHIN 72 HOURS, OR BEFORE YOU PRACTICE FOR OR PARTICIPATE IN ANY INTERSCHOLASTIC OR INTERCOLLEGIATE SPORTS EVENT, WHICHEVER OCCURS FIRST. DO NOT SIGN THIS CONTRACT UNTIL YOU HAVE READ IT AND FILLED IN ANY BLANK SPACES. YOU MAY CANCEL THIS CONTRACT BY NOTIFYING THE ATHLETE AGENT, OR OTHER PARTY TO THIS CONTRACT, IN WRITING OF YOUR DESIRE TO CANCEL NOT LATER THAN THE 15TH DAY AFTER THE DATE YOU SIGN THIS CONTRACT. HOWEVER, EVEN IF YOU CANCEL THIS CONTRACT, THE FEDERATION OR ASSOCIATION TO WHICH YOUR EDUCATIONAL INSTITUTION BELONGS MAY NOT RESTORE YOUR ELIGIBILITY."

ARTICLE 4 ENFORCEMENT

SECTION 18897.8-18897.97

A student-athlete or university may bring civil action for recovery of damages from an athlete agent if the athlete or university is adversely affected by the actions of the agent or his representatives or employees.

- A student athlete is presumed to be adversely affected if, because of the agent's actions, the student athlete is suspended or disqualified from participation in one or more intercollegiate contests by the NCAA or Pac-10 Conference, or suffers financial damage, or both.

- An educational institution is presumed to be adversely affected if, because of the agent's actions, the educational institution, or one or more of its admitted or enrolled student athletes is suspended or disqualified from participation in one or more intercollegiate contests by the NCAA or Pac-10 Conference, or suffers financial damage, or both.

If the student-athlete or university prevails in the civil action,

- The student-athlete and university may recover:
 - actual damages, or fifty thousand dollars (\$50,000), whichever is higher;
 - punitive damages;
 - court costs; and
 - reasonable attorney's fees.
- The athlete agent forfeits any right of repayment for anything of benefit or value provided to a student athlete, and shall refund any consideration paid to that athlete agent by or on behalf of the student athlete.

An athlete agent or his representative or employee who violates the California Agent Athlete Law is guilty of a misdemeanor, and shall be punished by:

- a fine of not more than fifty thousand dollars (\$50,000), or
- imprisonment in a county jail not exceeding one year, or
- both that fine and imprisonment.

The court also may suspend or revoke the convicted individual's privilege to conduct the business of athlete agent.