



# HOUSE COMMITTEE ON APPROPRIATIONS

## FISCAL NOTE

HOUSE BILL NO. 2633

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### COST / (SAVINGS)

FUND	FY 2022/23	FY 2023/24
State Athletic Commission Augmentation Account	See "Fiscal Impact"	See "Fiscal Impact"

**SUMMARY:** Repeals the current Uniform Athlete Agents Act and replaces it with the Revised Uniform Athlete Agents Act (2015) incorporates the college student athlete compensation related to name, image or likeness (NIL) provision from the Public School Code. This legislation would take effect immediately.

**ANALYSIS:** This legislation amends Title 5 (Athletics and Sports) of the Pennsylvania Consolidated Statutes by repealing Subparts A (Chapter 31) and B (Chapter 33), known as the Uniform Athlete Agents Act, and renaming Part II from "Athlete Agents" to "Athletes." The legislation replaces the repealed parts by adding Chapter 35 "Athlete Agents," to be known as the Revised Uniform Athlete Agents Act (2015).

**Registration Requirements:** An individual may not act as an athlete agent in the Commonwealth without holding a certificate of registration. The only exception is that an individual can act as an athlete agent for all purposes except the signing of an agency contract before being issued a certificate of registration if a student athlete or a person acting on behalf of the student athlete initiates communication with the individual and not later than seven days after an initial act which requires the individual to register as an athlete agent, the individual submits an application for registration. Any agent contract which results from conduct violating the registration provisions is void and the athlete agent is required to return any consideration received under the contract.

An application for registration as an athlete agent must be submitted to the State Athletic Commission (Commission) in a form prescribed by the Commission. The applicant must be an individual with the application signed by the applicant under penalty of perjury and containing the following information:

1. Name, date and place of birth of the applicant along with the following applicant contact information:
  - i. Address of the applicant's principal place of business
  - ii. Work and mobile telephone numbers
  - iii. Any means of communicating electronically, including fax number, email address and personal and business or employer websites.
2. Name of applicant's business or employer, including mailing address, telephone number, organization form and nature of business for each business or employer, if applicable.

3. Each social media account with which the applicant or the applicant's business or employer is affiliated.
4. Each business or occupation in which the applicant engaged within 5 years before the date of application, including self-employment and employment by others, and any professional or occupational license, registration or certification held by the applicant during that time.
5. Description of the applicant's formal training, practical experience and educational background relating to activities as an athlete agent.
6. Statement listing the name of each student athlete for whom the applicant acted as an athlete agent within 5 years before the date of application or, if the student athlete is a minor, name of the parent/guardian of the student athlete and the student athlete's sport and last known team.
7. Name and address of each person that is:
  - i. A partner, member, officer, manager, associate, or profit sharer or directly or indirectly holds an equity interest of 5% or greater of the athlete agent's business is not a corporation and
  - ii. An officer or director or a corporation employing the athlete agent or a shareholder having an interest of 5% or greater in the corporation.
8. Description of the status of each application by the applicant or a person named under (7) for a Federal or state business, professional or occupational license, other than as an athlete agent, from a Federal or state agency. This includes the denial, refusal to renew, suspension, withdrawal or termination of the license and each reprimand or censure related to the license.
9. Whether the applicant or a person named under (7) has pleaded guilty or no contest to, has been convicted of or has charges pending for an offense which involves moral turpitude or would constitute a felony if committed in Pennsylvania. The applicant must identify the offense, the law enforcement agency involved and the date of the plea/conviction and the penalty imposed, if applicable, for the offense.
10. Whether the applicant or a person named under (7) has been a defendant or respondent in a civil proceeding, including a proceeding under 20 Pa.C.S. Ch.55 Subch. C (relating to appointment of guardian, bonds; removal and discharge) within 15 years before the date of application. The applicant must state the date and a full explanation of the proceeding.
11. Whether the applicant or a person named under (7) has an unsatisfied judgment or a judgment of continuing effect, including an order under 23 Pa.C.S. Ch.37 (relating to alimony and support) or 43 (relating to support matters generally), which is not current at the date of the application.
12. Whether the applicant or a person named under (7) was adjudicated bankrupt or was an owner of a business that was adjudicated bankrupt within 10 years before the date of application.
13. Whether there has been any administrative or judicial determination that the applicant or a person named under (7) made a false, misleading, deceptive or fraudulent representation.
14. Each instance in which conduct of the applicant, or a person named under (7) resulted in:
  - i. Imposition on a student athlete of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic, intercollegiate, or professional athletic event; or
  - ii. Imposition of a sanction on an educational institution
15. Each sanction, suspension or disciplinary action taken against the applicant or a person named under (7) arising out of occupation or professional conduct.

16. Whether there has been a denial of an application for, suspension or revocation of, refusal to renew or abandonment of the registration of the applicant or a person named under (7) as an athlete agent in any state.
17. Each state in which the applicant currently is registered or has applied to be registered as an athlete agent.
18. If the applicant is certified or registered by a professional league or players association:
  - i. Name of the league or association
  - ii. Date of certification or registration and date of expiration, if applicable.
  - iii. Date of denial of an application for, suspension or revocation of, refusal to renew, withdrawal of or termination of the certification or registration and
  - iv. Date of reprimand or censure related to the certification or registration.
19. Additional information required by the Commission.

An individual who is registered as an athlete agent in another state can apply for registration as an athlete agent in Pennsylvania by submitting the following to the Commission:

1. A copy of the application for registration in the other state
2. A statement that identifies every material change in the information on the application or verifies there is no material change, signed under penalty of perjury and
3. A copy of the certificate of registration from the other state.

Whether an individual applies for registration or is registered as an athlete agent in another state and applies in Pennsylvania, the individual must submit to the Commission a report of criminal history record information from the Pennsylvania State Police (PSP) or a statement from the PSP that the PSP central repository contains no such information relating to the individual. The criminal history record information is to be limited to that relating to general regulation in Title 18.

**Certificate of Registration:** The Commission is required to issue a certificate of registration, which is valid for two years, to an applicant for registration who complies with the registration requirements. For an individual who is registered as an athlete agent in another state, the Commission is required to issue a certificate of registration if the following apply:

1. The application and registration requirements of the other state are substantially similar to or more restrictive than those in the Commonwealth.
2. The registration has not been revoked or suspended by the other state.
3. No action involving the individual's conduct as an athlete agent is pending against the individual or their registration in any state.

The Commission is required to cooperate with national organizations concerned with athlete agent issues and agencies in other states that register athlete agents to develop a common registration form and determine which states have laws that are substantially similar to or more restrictive than this chapter and exchange information, including information related to actions taken against registered athlete agents or their registrations with those organizations and agencies.

The Commission is permitted to refuse the issuance of a certificate of registration to an applicant if the Commission determines that the applicant has engaged in conduct that significantly adversely reflects on the applicant's fitness to act as an athlete agent. The Commission can consider whether the applicant has:

1. Pleaded guilty or no contest to, has been convicted of or has charges pending for an offense which involved moral turpitude or would constitute a felony if committed in the Commonwealth.
2. Made a materially false, misleading, deceptive or fraudulent representation in the application or as an athlete agent.
3. Engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity.
4. Partook in any of the prohibited conduct outlined in this chapter.
5. Had a registration as an athlete agent suspended, revoked, or denied in any state.
6. Been refused renewal of registration as an athlete in any state.
7. Engaged in conduct resulting in imposition on a student athlete or a sanction, suspension or declaration of ineligibility to participate in an interscholastic, intercollegiate or professional athletic event or imposition of a sanction on an educational institution.
8. Engaged in conduct that adversely reflects on the applicant's credibility, honesty or integrity.

The commission is required to consider how recently the conduct occurred, the nature of the conduct and the context in which it occurred, and other relevant conduct of the applicant when making a determination as to whether to refuse the issuance of a certification of registration.

To renew a registration, for another two years, an athlete agent can submit an application for renewal in a form prescribed by the Commission. The applicant must sign the application under penalty of perjury and include current information on all matters that are required in an original application. The Commission is permitted to limit, suspend, revoke, or refuse to renew a registration for conduct that would have justified refusal to issue a certificate of registration originally. For an athlete agent registered in another state and Pennsylvania, they can renew their registration in the same way or if the registration in the other state has been renewed, submit to the Commission copies of the application for renewal in the other state and the renewed registration from that state. The Commission is required to renew the out of state athlete agent's registration if the Commission determines that the registration requirements of the other state are substantially similar to or more restrictive than in Pennsylvania, the renewed registration has not been suspended or revoked and no action involving the individual's conduct as an athlete agent is pending against the individual or the registration in any state. The Commission is permitted to suspend or revoke the registration or renewal of registration for a reason for which the Commission could have refused to grant or renew registration or for conduct that would justify refusal to issue a certificate of registration originally. The Commission may deny, suspend, revoke, restrict or otherwise limit registration or refuse to renew a registration after proper notice and an opportunity for a hearing is given in accordance with current law relating to the practice and procedures of Commonwealth agencies.

The Commission can issue a temporary certificate of registration while an application or renewal for registration is pending. The fee for an application for registration or renewal is \$200 for an initial application or renewal of registration for an individual or sole proprietor not registered in another state. For an individual or a sole proprietor who is registered, certified or licensed in another state, the fee for an application or renewal is \$150. The Commission is permitted to increase the fees by regulation if the revenue raised by fees, fines and civil penalties imposed under this chapter are not enough to cover the costs of the Commission to implement the provision of this chapter but cannot exceed the amounts necessary to do so.

**Agency Contract:** An agency contract must be in a record signed by the parties and contain:

1. A statement that the athlete agent is registered as an athlete agent in this Commonwealth and a list of any other states in which the athlete agent is registered.
2. 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 consideration the athlete agent has received or will receive from any other source for entering into the contract or providing the services.
3. The name of any person that is not listed in the athlete agent's application for or renewal of registration and will be compensated because the student athlete signed the contract.
4. A description of any expenses the student athlete agrees to reimburse.
5. A description of the services to be provided to the student athlete.
6. The duration of the contract.
7. The date of execution.

An agency contract must also contain a conspicuous notice in boldface type and in a substantially specific form as provided within the legislation.

If a student athlete is a minor, the notice must be revised to address the student athlete's parent/guardian. Additionally, an agency contract must also be accompanied by a separate record signed by the student athlete or if the student athlete is a minor, the parent/guardian of the student athlete acknowledging that signing the contract can result in the loss of the student athlete's eligibility to participate in the student athlete's sport. The athlete agent is required to give the student athlete or the parent/guardian if the student athlete is a minor a copy in a record of the contract and the separate acknowledgment at the time an agency contract is executed.

An agency contract that does not conform to these requirements can be voided by a student athlete or the parent/guardian of a student athlete if they are a minor. If the contract is voided, consideration received from the athlete agent to induce entering into the contract is not required to be returned. Additionally, a student athlete or the parent/guardian of a minor can cancel an agency contract by giving notice in a record of cancellation to the athlete agent no later than 14 days after the contract is signed. A student athlete or the parent/guardian cannot waive the right to cancel an agency contract. If an agency contract is cancelled, the student athlete or parent/guardian is not required to pay consideration under the contract or return consideration received from the athlete agent to influence the student athlete to enter the contract.

**Notices:** Both the athlete agent and student athlete must provide notice if an athlete agent and a student athlete enter into an agency contract. The athlete agent must give notice in a record of the existence of the agency contract to the athletic director of the educational institution where the student athlete is enrolled or an educational institution the athlete agent has reasonable grounds to believe the student athlete intends to enroll. Notice is required to be given no later than 72 hours after entering into a contract or before the next scheduled athletic event the student athlete may participate, whichever is sooner. The student athlete must inform the athletic director of the educational institution where the student is enrolled that they have entered into an agency contract and provide the name and contact information of the athlete agent. The student athlete must provide this information within the same required timeframe an athlete agent has. If an athlete agent and student athlete enter into an agency contract and the student athlete subsequently enrolls in an educational institution, then the athlete agent has 72 hours from the time the agent knew or should have known the student athlete enrolled to notify the athletic director at that educational institution.

Notice to an educational institution is required in other circumstances:

- When an athlete agent has a relationship with a student athlete who subsequently enrolls in an educational institution and receives an athletic scholarship from that institution. The athlete agent has 10 days after the enrollment of the student to make the notification and whether the relationship was motivated in whole or part by the intention to recruit or solicit the student athlete to enter an agency contract in the future or whether the agent directly or indirectly recruited or solicited the student athlete to enter a contract before enrollment.
- When an athlete agent communicates or attempts to communicate with a student athlete enrolled at an educational institution, or if the student is a minor, the parent/guardian or another individual so to influence, or have another individual influence the student athlete or parent/guardian to enter into an agency contract. This must be in a record to the athletic director.
- When a communication or attempt to communicate is initiated by a student athlete or an individual on behalf of the student, then the athlete agent must notify in a record to the athletic director no later than 10 days after the communication.

Notice to Commission:

- An educational institution that becomes aware of a violation of this chapter by an athlete agent is required to provide notice of the violation to the Commission and any professional league or players association with which the athlete agent is licensed or registered (if known).
- The athletic director of the educational institution where the student athlete is enrolled, or the athletic director's designee, is required to give notice in a record of the existence of the agency contract to the Commission within 72 hours of receiving notice from the athlete agent or student athlete as outlined above.

**Required Records:** An athlete agent is required to create and retain records, which are open to inspection by the Commission, of the following for 5 years:

- The name and address of each individual represented by the athlete agent
- Each agency contract entered into by the athlete agent
- The direct costs incurred by the athlete agent in the recruitment or solicitation of each student athlete to enter into an agency contract.

**Prohibited Conduct and Criminal Penalty:** An athlete agent cannot intentionally do any of the following:

1. Give a student athlete, or parent/guardian, materially false or misleading information or make a materially false promise or representation with the intent to influence the student athlete or parent/guardian to enter into an agency contract.
2. Furnish anything of value to a student athlete or another individual if the thing of value could result in loss of the student's eligibility to participate in the student's sport, unless:
  - i. the athlete agent notifies the athletic director of the educational institution where the student athlete is enrolled or intends to enroll, no later than 72 hours after giving the thing of value and
  - ii. the student athlete or parent/guardian acknowledges to the athlete agent in a record that receipt of the thing of value could result in loss of the student's eligibility to participate in the student athlete's sport.

3. Initiate contact, directly or indirectly, with a student athlete or parent/guardian to recruit or solicit the student athlete, or parent/guardian to enter an agency contract unless registered with the Commission.
4. Fail to create, retain or permit inspection of the required records.
5. Fail to register as an athlete agent as required.
6. Provide materially false or misleading information in an application for or renewal of registration.
7. Predate or postdate an agency contract.
8. Fail to notify a student athlete or parent/guardian before the student athlete or parent/guardian signs an agency contract for a particular sport that the signing could result in loss of the student's eligibility to participate in the sport.
9. Encourage another individual to do any of the outlined prohibited activities on behalf of the athlete agent.
10. Encourage another individual to assist any other individual in doing any of the outlined prohibited activities on behalf of the athlete agent.

An athlete agent who violates these prohibited activities commits a misdemeanor of the third degree.

**Civil Remedy and Civil Penalty:** An educational institution or student athlete is able to bring an action for damage against an athlete agent if the educational institution or student athlete is adversely affected by an act or omission of the athlete agent in violation of this chapter.

An educational institution is adversely affected only if, because of the act or omission, the educational institution:

- is suspended or disqualified from participation in an interscholastic or intercollegiate sports event by or under the rules of a state or national federation or association which promotes or regulates interscholastic or intercollegiate sports or suffers financial damage.

A student athlete is adversely affected by an act or omission of the athlete agent only if all of the following apply:

- At the time of the act or omission, the student athlete was enrolled in an educational institution
- Because of the act or omission, the student athlete is suspended or disqualified from participation in an interscholastic or intercollegiate sports event by or under the rules of a state or national federation or association which promotes or regulates interscholastic or intercollegiate sports or suffers financial damage.

A plaintiff that wins a civil action can recover actual damages and court costs. An athlete agent found liable under this section forfeits any right of payment for anything of benefit or value provided to the student athlete and must refund consideration paid to the athlete agent by or on behalf of the student athlete.

The Commission is permitted to assess an administrative penalty against an athlete agent not to exceed \$50,000 for a violation of this chapter. The administrative penalty is subject to 2 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and 7 Subch. A (relating to judicial review of Commonwealth agency action).

**Registered Athlete Agent Directory:** The Commission is required to develop and maintain a database for all registration of an athlete agent under this chapter. The database is to be made available on the Commission's publicly accessible website.

**Miscellaneous Provisions:** All fees, civil penalties, forfeitures and other money collected under this chapter and the regulations of the Commission are to be paid into the Athletic Commission Augmentation Account.

**Chapter 37 Intercollegiate Athletics:** This new chapter was originally Article XX-K of the Public School Code, which outlines the provisions allowing a college student athlete to earn compensation for the use of the college student athlete's name, image or likeness. Chapter 37 is a continuation of this article.

**Repeal:** 18 Pa.C.S. Section 7107 is repealed insofar as it is inconsistent with this act.

Article XX-K of the Public School Code of 1949 is repealed.

All activities under Article XX-K are to continue and remain in full force and effect and can be completed under 5 Pa.C.S. Chapter 37. This includes contracts, obligations and collective bargaining agreements. Additionally, any difference in language between Article XX-K and Chapter 37 is simply to conform to the style of the consolidated statutes and not intended to affect legislative intent or implementation. Repeals: 18 Pa.C.S. Section 7107 is repealed insofar as it is inconsistent with this act.

**FISCAL IMPACT:** According to the Department of State, they anticipate that additional agents may register under the act, therefore, they estimate there could be a slight increase in revenue for the State Athletic Commission Augmentation Account.

The remainder of this legislation would have no adverse fiscal impact on Commonwealth funds.

**PREPARED BY:** Tim Rodrigo  
House Appropriations Committee (R)

**DATE:** October 26, 2022

*Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.*