

Senate Bill 5

Sponsored by Senator COURTNEY (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies definition of "athlete agent." Expands application of statutes regulating athlete agents to include agents representing student athletes at elementary and secondary schools.

Requires athlete agent to notify educational institution in writing before initiating contact with student athlete.

Provides that Department of Justice may impose civil penalties for violation of statutes relating to athlete agents. Directs department to impose civil penalties for certain violations.

Punishes certain violations of statutes relating to athlete agents by maximum of one year's imprisonment, \$6,250 fine, or both.

A BILL FOR AN ACT

1
2 Relating to athlete agents; creating new provisions; and amending ORS 180.095, 702.005, 702.032,
3 702.065, 702.991 and 702.994.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 702.005 is amended to read:

6 702.005. As used in ORS 702.005 to 702.065, 702.991 and 702.994:

7 (1) "Agency contract" means an agreement in which a student athlete authorizes a person to
8 negotiate or solicit on behalf of the student athlete a professional sports services contract or an
9 endorsement contract.

10 (2)(a) "Athlete agent" means an individual who [*enters into an agency contract with a student*
11 *athlete or, directly or indirectly, recruits or solicits a student athlete to enter into an agency contract.*
12 *"Athlete agent" includes*] **represents, directly or indirectly, a student athlete in the marketing**
13 **of the student athlete's athletic ability or reputation, or who recruits or solicits a student**
14 **athlete to enter into an agency contract, including but not limited to:**

15 (A) An individual who represents to the public that the individual is an athlete agent.

16 (B) **A contract adviser.**

17 (C) **A financial planner.**

18 (b) "Athlete agent" does not include a spouse, parent, sibling, grandparent or legal guardian of
19 the student athlete or an individual acting solely on behalf of a professional sports team or profes-
20 sional sports organization.

21 (3) "Athletic director" means an individual responsible for administering the overall athletic
22 program of an educational institution or, if an educational institution has separately administered
23 athletic programs for male students and female students, the athletic program for males or the ath-
24 letic program for females, as appropriate.

25 (4) "Contact" means a communication, direct or indirect, between an athlete agent and a student
26 athlete, to recruit or solicit the student athlete to enter into an agency contract.

27 (5) **"Educational institution" means a public or private elementary school, secondary**
28 **school, community college, college, university or other educational institution.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 [(5)] (6) “Endorsement contract” means an agreement under which a student athlete is employed
 2 or receives consideration to use on behalf of the other party any value that the student athlete may
 3 have because of publicity, reputation, following or fame obtained because of athletic ability or per-
 4 formance.

5 [(6)] (7) “Intercollegiate sport” means a sport played at the collegiate level for which eligibility
 6 requirements for participation by a student athlete are established by a national association for the
 7 promotion or regulation of collegiate athletics.

8 [(7)] (8) “Person” means an individual, corporation, business trust, estate, trust, partnership,
 9 limited liability company, association, joint venture, public body, as defined in ORS 174.109, or any
 10 other legal or commercial entity.

11 [(8)] (9) “Professional sports services contract” means an agreement under which an individual
 12 is employed, or agrees to render services, as a player on a professional sports team, with a profes-
 13 sional sports organization or as a professional athlete.

14 [(9)] (10) “Record” means information that is inscribed on a tangible medium or that is stored
 15 in an electronic or other medium and is retrievable in perceivable form.

16 [(10)] (11) “Registration” means registration as an athlete agent pursuant to ORS 702.005 to
 17 702.065, 702.991 and 702.994.

18 [(11)] (12) “State” means a state of the United States, the District of Columbia, Puerto Rico, the
 19 United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the
 20 United States.

21 [(12)] (13) “Student athlete” means an individual **admitted to or enrolled in an educational**
 22 **institution** who engages in, is eligible to engage in or may be eligible in the future to engage in
 23 any **interscholastic or** intercollegiate sport. If an individual is permanently ineligible to participate
 24 in a particular **interscholastic or** intercollegiate sport, the individual is not a student athlete for
 25 purposes of that sport.

26 **SECTION 2. Section 3 of this 2011 Act is added to and made a part of ORS 702.005 to**
 27 **702.065.**

28 **SECTION 3. Before initiating contact with a student athlete, an athlete agent shall pro-**
 29 **vide written notice to the educational institution at which the student athlete is enrolled or**
 30 **admitted stating that the athlete agent intends to contact a student athlete at the educa-**
 31 **tional institution.**

32 **SECTION 4.** ORS 702.032 is amended to read:

33 702.032. An athlete agent may not, for the purpose of inducing a student athlete to enter into
 34 an agency contract, **directly or indirectly** furnish anything of value to the student athlete before
 35 the student athlete enters into an agency contract.

36 **SECTION 5.** ORS 702.991 is amended to read:

37 702.991. (1) **Violation of ORS 702.027 is a Class A misdemeanor.**

38 (2) **Violation of section 3 of this 2011 Act is a Class A misdemeanor.**

39 [(1)] (3) *[An athlete agent who violates]* **Violation of ORS 702.032 is [guilty of]** a Class C felony.

40 [(2)] (4) Violation of the athlete agent’s 72-hour notice requirement provided under ORS 702.054
 41 (1) is a Class C felony.

42 [(3)] (5) It is a Class A misdemeanor for any person to conduct business as an athlete agent in
 43 the State of Oregon unless the person has a valid certificate of registration issued pursuant to ORS
 44 702.012 or 702.019.

45 [(4)] (6) It is a Class A misdemeanor for any person to represent to another person by verbal

1 claim, advertisement, letterhead, business card or any other means that the person is an athlete
 2 agent unless the person has a valid certificate of registration issued pursuant to ORS 702.012 or
 3 702.019.

4 **SECTION 6.** ORS 702.065 is amended to read:

5 702.065. In applying and construing ORS 702.005 to 702.065, 702.991 and 702.994, the courts
 6 [and], the Department of Education **and the Department of Justice** shall give consideration to the
 7 need to promote uniformity of the law with respect to its subject matter among states that have
 8 enacted the Uniform Athlete Agents Act.

9 **SECTION 7.** ORS 702.994 is amended to read:

10 702.994. (1) **Except as provided in subsections (2) and (3) of this section**, the Department of
 11 [Education] **Justice** may assess a civil penalty against an athlete agent not to exceed \$25,000 for a
 12 violation of [this section and] ORS 702.005 to 702.065.

13 **(2)(a) For an athlete agent's first violation of ORS 702.012 (1), the department shall im-**
 14 **pose a civil penalty of \$2,500.**

15 **(b) For an athlete agent's subsequent violations of ORS 702.012 (1), the department shall**
 16 **impose a civil penalty of \$5,000.**

17 **(3)(a) For an athlete agent's first violation of ORS 702.054 (1), the department shall im-**
 18 **pose a civil penalty of \$500.**

19 **(b) For an athlete agent's subsequent violations of ORS 702.054 (1), the department shall**
 20 **impose a civil penalty of \$1,000.**

21 [(2)] (4) Civil penalties under [subsection (1) of] this section shall be imposed in the manner
 22 provided in ORS 183.745.

23 [(3)] (5) All civil penalties recovered under this section shall be paid into the State Treasury
 24 and credited to the [General Fund and are available for general governmental expenses] **Department**
 25 **of Justice Protection and Education Revolving Account created in ORS 180.095.**

26 **SECTION 8.** ORS 180.095 is amended to read:

27 180.095. (1) The Department of Justice Protection and Education Revolving Account is created
 28 in the General Fund. All moneys in the account are continuously appropriated to the Department
 29 of Justice and may be used to pay for only the following activities:

30 (a) Restitution and refunds in proceedings described in paragraph (c) of this subsection;

31 (b) Consumer and business education relating to the laws governing antitrust, unlawful trade
 32 practices and the environment; and

33 (c) Personal services, travel, meals, lodging and all other costs and expenses incurred by the
 34 department in investigating, preparing, commencing and prosecuting the following actions and
 35 [suits] **proceedings**, and enforcing judgments, settlements, compromises and assurances of voluntary
 36 compliance arising out of the following actions and [suits] **proceedings**:

37 (A) Actions and suits under the state and federal antitrust laws;

38 (B) Actions and suits under ORS 646.605 to 646.656;

39 (C) Criminal prosecutions under state and federal environmental laws;

40 (D) Actions commenced under ORS 59.331; [and]

41 (E) Actions and suits under ORS 180.750 to 180.785; **and**

42 **(F) Administrative proceedings under ORS 702.994.**

43 (2) Moneys in the Department of Justice Protection and Education Revolving Account are not
 44 subject to allotment. Upon request of the Attorney General, the State Treasurer shall create sub-
 45 accounts within the account for the purposes of managing moneys in the account and allocating

1 those moneys to the activities described in subsection (1) of this section.

2 (3) Except as otherwise provided by law, all sums of money received by the Department of Jus-
3 tice under a judgment, settlement, compromise or assurance of voluntary compliance, including
4 damages, restitution, refunds, attorney fees, costs, disbursements, **civil penalties** and other recov-
5 eries, but excluding civil penalties under ORS 646.642, in proceedings described in subsection (1)(c)
6 of this section shall, upon receipt, be deposited with the State Treasurer to the credit of the De-
7 partment of Justice Protection and Education Revolving Account. However, if the action or [*suit*]
8 **proceeding** was based on an expenditure or loss from a public body or a dedicated fund, the amount
9 of such expenditure or loss, after deduction of attorney fees and expenses awarded to the department
10 by the court or agreed to by the parties, if any, shall be credited to the public body or dedicated
11 fund and the remainder thereof credited to the Department of Justice Protection and Education
12 Revolving Account.

13 (4) If the Department of Justice recovers restitution or refunds in a proceeding described in
14 subsection (1)(c) of this section, and the department cannot determine the persons to whom the
15 restitution or refunds should be paid or the amount of the restitution or refund payable to individual
16 claimants is de minimis, the restitution or refunds may not be deposited in the Department of Justice
17 Protection and Education Revolving Account and shall be deposited in the General Fund.

18 (5) Before April 1 of each odd-numbered year, the Department of Justice shall report to the Joint
19 Committee on Ways and Means:

20 (a) The department's projection of the balance in the Department of Justice Protection and Ed-
21 ucation Revolving Account at the end of the biennium in which the report is made and at the end
22 of the following biennium;

23 (b) The amount of the balance held for restitution and refunds; and

24 (c) An estimate of the department's anticipated costs and expenses under subsection (1)(b) and
25 (c) of this section for the biennium in which the report is made and for the following biennium.

26 (6) The Joint Committee on Ways and Means, after consideration of recommendations made by
27 the Department of Justice, shall use the information reported under subsection (5) of this section to
28 determine an appropriate balance for the revolving account.

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