

A-Engrossed House Bill 3296

Ordered by the House April 1
Including House Amendments dated April 1

Sponsored by Representatives BARNHART, WHISNANT

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.

Modifies, for purposes of regulating student athlete agents, definitions of [*“agency contract” and “athlete agent.”*] **“agency contract,” “athlete agent” and “athletic director.”** Expands application of statutes regulating athlete agents to include agents representing student athletes at elementary and secondary schools.

Requires athlete agent to notify **athletic director of** educational institution in writing before initiating contact with student athlete.

Makes violation of certain statutes relating to athlete agents unlawful trade practice.

A BILL FOR AN ACT

1
2 Relating to athlete agents; creating new provisions; and amending ORS 646.608, 702.005, 702.012,
3 702.027, 702.047, 702.052 and 702.065.

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*]:

8 (a) **A written or oral agreement in which a student athlete authorizes a person, organization**
9 **or legal, commercial or other entity to negotiate or solicit on behalf of the student athlete a**
10 **professional sports services contract or an endorsement contract; or**

11 (b) **A written or oral agreement entered into by a student athlete that makes the student**
12 **athlete ineligible to participate in an interscholastic or intercollegiate sport because of a vi-**
13 **olation of rules or regulations established by a state or national organization that governs**
14 **student athlete eligibility or participation.**

15 (2)(a) “Athlete agent” means an individual who [*enters into an agency contract with a student*
16 *athlete or, directly or indirectly, recruits or solicits a student athlete to enter into an agency contract.*
17 *“Athlete agent” includes an individual who represents to the public that the individual is an athlete*
18 *agent.*], **directly or indirectly:**

19 (A) **Represents or attempts to represent a student athlete for the purpose of marketing**
20 **the student athlete’s athletic ability or reputation for financial gain; or**

21 (B) **Seeks to obtain a type of financial gain or benefit from securing a prospective student**
22 **athlete’s enrollment at an educational institution or from a student athlete’s potential**
23 **earnings as a professional athlete.**

24 (b) “Athlete agent” does not include a spouse, parent, sibling, grandparent or legal guardian of
25 the student athlete or an individual acting solely on behalf of a professional sports team or profes-

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 sional sports organization.

2 (3) "Athletic director" means:

3 (a) An individual responsible for administering the overall athletic program of an educational
4 institution or, if an educational institution has separately administered athletic programs for male
5 students and female students, the athletic program for males or the athletic program for females,
6 as appropriate[.];

7 (b) **If the educational institution is a public or private elementary school or secondary
8 school and the educational institution does not have a person responsible for administering
9 the overall athletic program:**

10 (A) **The principal of the educational institution; or**

11 (B) **If the educational institution does not have a principal, the person designated by the
12 governing body of the school district, education service district or charter school to manage
13 the educational institution; or**

14 (c) **If the educational institution is a community college or university and the educational
15 institution does not have a person responsible for administering the overall athletic program:**

16 (A) **The president of the educational institution; or**

17 (B) **If the educational institution does not have a president, the Chancellor of the Oregon
18 University System or, if the educational institution is not a part of the Oregon University
19 System, the person designated by the governing body of the educational institution to man-
20 age the educational institution.**

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

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

25 [(5)] (6) "Endorsement contract" means an agreement under which a student athlete is employed
26 or receives consideration to use on behalf of the other party any value that the student athlete may
27 have because of publicity, reputation, following or fame obtained because of athletic ability or per-
28 formance.

29 [(6)] (7) "Intercollegiate sport" means a sport played at the collegiate level for which eligibility
30 requirements for participation by a student athlete are established by a national association for the
31 promotion or regulation of collegiate athletics.

32 [(7)] (8) "Person" means an individual, corporation, business trust, estate, trust, partnership,
33 limited liability company, association, joint venture, public body, as defined in ORS 174.109, or any
34 other legal or commercial entity.

35 [(8)] (9) "Professional sports services contract" means an agreement under which an individual
36 is employed, or agrees to render services, as a player on a professional sports team, with a profes-
37 sional sports organization or as a professional athlete.

38 [(9)] (10) "Record" means information that is inscribed on a tangible medium or that is stored
39 in an electronic or other medium and is retrievable in perceivable form.

40 [(10)] (11) "Registration" means registration as an athlete agent pursuant to ORS 702.005 to
41 702.065, 702.991 and 702.994.

42 [(11)] (12) "State" means a state of the United States, the District of Columbia, Puerto Rico, the
43 United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the
44 United States.

45 [(12)] (13) "Student athlete" means an individual **attending an educational institution within**

1 **this state** who engages in, is eligible to engage in or may be eligible in the future to engage in any
2 **interscholastic or** intercollegiate sport. If an individual is permanently ineligible to participate in
3 a particular **interscholastic or** intercollegiate sport, the individual is not a student athlete for
4 purposes of that sport.

5 **SECTION 2. Section 3 of this 2013 Act is added to and made a part of ORS 702.005 to**
6 **702.065.**

7 **SECTION 3. (1) Before initiating contact with a student athlete, an athlete agent shall**
8 **provide written notice to the athletic director of the educational institution at which the**
9 **student athlete is enrolled or admitted. Notice provided under this subsection must state**
10 **that the athlete agent intends to contact a student athlete at the educational institution.**

11 **(2) The written notice required by subsection (1) of this section may be delivered per-**
12 **sonally or by registered or certified mail, electronic mail, facsimile or other electronic**
13 **means.**

14 **SECTION 4.** ORS 702.012 is amended to read:

15 702.012. (1) Except as otherwise provided in subsection (2) of this section, an individual may not
16 act as an athlete agent in Oregon without holding a certificate of registration issued under this
17 section or ORS 702.019.

18 (2) Before being issued a certificate of registration, an individual may act as an athlete agent
19 in Oregon for all purposes except [*signing*] **entering into** an agency contract, if:

20 (a) A student athlete [*or another person acting on behalf of the student athlete*] initiates commu-
21 nication with the individual; and

22 (b) Within seven days after an initial act as an athlete agent, the individual submits an appli-
23 cation for registration as an athlete agent in Oregon.

24 (3) An agency contract resulting from conduct in violation of this section is void and the athlete
25 agent shall return any consideration received under the contract.

26 (4) Except as otherwise provided in subsection (5) of this section, the Department of Education
27 shall issue a certificate of registration to an individual who complies with ORS 702.017 (1) and (2)
28 or whose application has been accepted under ORS 702.017 (3).

29 (5) The department may refuse to issue a certificate of registration if the department determines
30 that the applicant has engaged in conduct that has a significant adverse effect on the applicant's
31 fitness to act as an athlete agent. In making the determination, the department may consider
32 whether the applicant has:

33 (a) Been convicted of a crime that, if committed in Oregon, would be a crime involving moral
34 turpitude or a felony;

35 (b) Made a materially false, misleading, deceptive or fraudulent representation in the application
36 or as an athlete agent;

37 (c) Engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;

38 (d) Engaged in conduct prohibited by ORS 702.027;

39 (e) Had a registration or licensure as an athlete agent suspended, revoked or denied or been
40 refused renewal of registration or licensure as an athlete agent in any state;

41 (f) Engaged in conduct the consequence of which was that a sanction, suspension or declaration
42 of ineligibility to participate in an interscholastic or intercollegiate athletic event was imposed on
43 a student athlete or educational institution; or

44 (g) Engaged in conduct that significantly adversely reflects on the applicant's credibility, hon-
45 esty or integrity.

1 (6) In making a determination under subsection (5) of this section, the department shall consider:

2 (a) How recently the conduct occurred;

3 (b) The nature of the conduct and the context in which it occurred; and

4 (c) Any other relevant conduct of the applicant.

5 (7) An athlete agent may apply to renew a registration by submitting an application for renewal
6 in a form prescribed by the department. The application for renewal must be signed by the applicant
7 under penalty of perjury and must contain current information on all matters required in an original
8 registration.

9 (8) An individual who has submitted an application for renewal of registration or licensure in
10 another state, in lieu of submitting an application for renewal in the form prescribed pursuant to
11 subsection (7) of this section, may file a copy of the application for renewal and a valid certificate
12 of registration or licensure from the other state. The department shall accept the application for
13 renewal from the other state as an application for renewal in Oregon if the application to the other
14 state:

15 (a) Was submitted in the other state within the preceding six months and the applicant certifies
16 that the information contained in the application for renewal is current;

17 (b) Contains information substantially similar to or more comprehensive than that required in
18 an application for renewal submitted in Oregon; and

19 (c) Was signed by the applicant under penalty of perjury.

20 (9) A certificate of registration or a renewal of a registration is valid for two years.

21 (10) The department may suspend, revoke or refuse to renew a registration for conduct that
22 would have justified denial of registration under subsection (5) of this section.

23 (11) The department may deny, suspend, revoke or refuse to renew a certificate of registration
24 or licensure only after proper notice and an opportunity for a hearing.

25 **SECTION 5.** ORS 702.027 is amended to read:

26 702.027. An athlete agent may not intentionally:

27 (1) Initiate contact with a student athlete unless registered under ORS 702.005 to 702.065,
28 702.991 and 702.994;

29 (2) Refuse or fail to retain or permit inspection of the records required to be retained by ORS
30 702.059;

31 (3) Fail to register when required by ORS 702.012;

32 (4) Provide materially false or misleading information in an application for registration or re-
33 newal of registration;

34 (5) Predate or postdate [*an*] **a written** agency contract; or

35 (6) Fail to notify a student athlete before the student athlete [*signs or otherwise authenticates*]
36 **enters into** an agency contract for a particular sport that [*the signing or authentication*] **entering**
37 **into the agency contract** may make the student athlete ineligible to participate as a student
38 athlete in that sport.

39 **SECTION 6.** ORS 702.047 is amended to read:

40 702.047. (1) [*An*] **A written** agency contract must be in a record, signed or otherwise
41 authenticated by the parties.

42 (2) [*An*] **A written** agency contract must state or contain:

43 (a) The amount and method of calculating the consideration to be paid by the student athlete
44 for services to be provided by the athlete agent under the contract and any other consideration the
45 athlete agent has received or will receive from any other source for entering into the contract or

1 for providing the services;

2 (b) The name of any person not listed in the application for registration or renewal of registra-
3 tion who will be compensated because the student athlete signed the **written** agency contract;

4 (c) A description of any expenses that the student athlete agrees to reimburse;

5 (d) A description of the services to be provided to the student athlete;

6 (e) The duration of the contract; and

7 (f) The date of execution.

8 (3) [An] **A written** agency contract must contain, in close proximity to the signature of the
9 student athlete, a conspicuous notice in boldfaced type in capital letters stating:

11
12 **WARNING TO THE STUDENT ATHLETE:**

13
14 **IF YOU SIGN THIS CONTRACT:**

15 (1) **YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT ATHLETE IN**
16 **YOUR SPORT.**

17 (2) *[IF YOU HAVE AN ATHLETIC DIRECTOR,]* **BOTH YOU AND YOUR ATHLETE AGENT**
18 **MUST NOTIFY YOUR ATHLETIC DIRECTOR WITHIN 72 HOURS AFTER ENTERING INTO**
19 **THIS CONTRACT, OR BEFORE YOU PARTICIPATE IN ANY INTERSCHOLASTIC OR**
20 **INTERCOLLEGIATE SPORTS EVENT, WHICHEVER OCCURS FIRST.**

21 (3) **YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCEL-**
22 **LATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.**

24
25 (4) [An] **A written** agency contract that does not conform to this section is voidable by the
26 student athlete. If a student athlete voids [an] **a written** agency contract **under this subsection,**
27 the student athlete is not required to pay any consideration under the contract or to return any
28 consideration received from the athlete agent to induce the student athlete to enter into the con-
29 tract.

30 (5) The athlete agent shall give a record of the *[signed or otherwise authenticated]* **written**
31 agency contract to the student athlete at the time of execution.

32 **SECTION 7.** ORS 702.052 is amended to read:

33 702.052. (1) A student athlete may cancel an agency contract by giving notice of the cancellation
34 to the athlete agent in a record within 14 days after *[the contract is signed]* **entering into the**
35 **agency contract.**

36 (2) The right of a student **athlete** to cancel [a] **an agency** contract under this section may not
37 be waived.

38 (3) If a student athlete cancels an agency contract, the student athlete is not required to pay
39 any consideration under the contract or to return any consideration received from the athlete agent
40 to induce the student athlete to enter into the contract.

41 **SECTION 8.** ORS 646.608, as amended by section 6, chapter 52, Oregon Laws 2012, is amended
42 to read:

43 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-
44 ness, vocation or occupation the person does any of the following:

45 (a) Passes off real estate, goods or services as those of another.

1 (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, ap-
2 proval, or certification of real estate, goods or services.

3 (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-
4 ciation with, or certification by, another.

5 (d) Uses deceptive representations or designations of geographic origin in connection with real
6 estate, goods or services.

7 (e) Represents that real estate, goods or services have sponsorship, approval, characteristics,
8 ingredients, uses, benefits, quantities or qualities that they do not have or that a person has a
9 sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.

10 (f) Represents that real estate or goods are original or new if they are deteriorated, altered,
11 reconditioned, reclaimed, used or secondhand.

12 (g) Represents that real estate, goods or services are of a particular standard, quality, or grade,
13 or that real estate or goods are of a particular style or model, if they are of another.

14 (h) Disparages the real estate, goods, services, property or business of a customer or another
15 by false or misleading representations of fact.

16 (i) Advertises real estate, goods or services with intent not to provide them as advertised, or
17 with intent not to supply reasonably expectable public demand, unless the advertisement discloses
18 a limitation of quantity.

19 (j) Makes false or misleading representations of fact concerning the reasons for, existence of,
20 or amounts of price reductions.

21 (k) Makes false or misleading representations concerning credit availability or the nature of the
22 transaction or obligation incurred.

23 (L) Makes false or misleading representations relating to commissions or other compensation to
24 be paid in exchange for permitting real estate, goods or services to be used for model or demon-
25 stration purposes or in exchange for submitting names of potential customers.

26 (m) Performs service on or dismantles any goods or real estate when not authorized by the
27 owner or apparent owner thereof.

28 (n) Solicits potential customers by telephone or door to door as a seller unless the person pro-
29 vides the information required under ORS 646.611.

30 (o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give
31 a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of
32 the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or
33 otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate,
34 discount or other value is contingent upon occurrence of an event subsequent to the time the cus-
35 tomer enters into the transaction.

36 (p) Makes any false or misleading statement about a prize, contest or promotion used to publi-
37 cize a product, business or service.

38 (q) Promises to deliver real estate, goods or services within a certain period of time with intent
39 not to deliver them as promised.

40 (r) Organizes or induces or attempts to induce membership in a pyramid club.

41 (s) Makes false or misleading representations of fact concerning the offering price of, or the
42 person's cost for real estate, goods or services.

43 (t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any
44 known material defect or material nonconformity.

45 (u) Engages in any other unfair or deceptive conduct in trade or commerce.

- 1 (v) Violates any of the provisions relating to auction sales, auctioneers or auction marts under
2 ORS 698.640, whether in a commercial or noncommercial situation.
- 3 (w) Manufactures mercury fever thermometers.
- 4 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
5 law, or is:
- 6 (A) Prescribed by a person licensed under ORS chapter 677; and
7 (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and
8 on the proper cleanup of mercury should breakage occur.
- 9 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
10 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
11 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
12 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
13 graph, "thermostat" means a device commonly used to sense and, through electrical communication
14 with heating, cooling or ventilation equipment, control room temperature.
- 15 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains
16 mercury light switches.
- 17 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.
18 (bb) Violates ORS 646A.070 (1).
19 (cc) Violates any requirement of ORS 646A.030 to 646A.040.
20 (dd) Violates the provisions of ORS 128.801 to 128.898.
21 (ee) Violates ORS 646.883 or 646.885.
22 (ff) Violates ORS 646.569.
23 (gg) Violates the provisions of ORS 646A.142.
24 (hh) Violates ORS 646A.360.
25 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
26 (jj) Violates ORS 646.563.
27 (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.
28 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
29 thereto.
- 30 (mm) Violates ORS 646A.210 or 646A.214.
31 (nn) Violates any provision of ORS 646A.124 to 646A.134.
32 (oo) Violates ORS 646A.095.
33 (pp) Violates ORS 822.046.
34 (qq) Violates ORS 128.001.
35 (rr) Violates ORS 646.649 (2) to (4).
36 (ss) Violates ORS 646A.090 (2) to (4).
37 (tt) Violates ORS 87.686.
38 (uu) Violates ORS 646.651.
39 (vv) Violates ORS 646A.362.
40 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
41 (xx) Violates ORS 180.440 (1) or 180.486 (1).
42 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
43 (zz) Violates ORS 87.007 (2) or (3).
44 (aaa) Violates ORS 92.405 (1), (2) or (3).
45 (bbb) Engages in an unlawful practice under ORS 646.648.

- 1 (ccc) Violates ORS 646A.365.
2 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
3 (eee) Sells a gift card in violation of ORS 646A.276.
4 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
5 (ggg) Violates ORS 646A.430 to 646A.450.
6 (hhh) Violates a provision of ORS 744.318 to 744.384, 744.991 and 744.992.
7 (iii) Violates a provision of ORS 646A.702 to 646A.720.
8 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
9 scribed in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the
10 subject of the violation.
11 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
12 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
13 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
14 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
15 (nnn) Violates ORS 646A.082.
16 (ooo) Violates ORS 646.647.
17 (ppp) Violates ORS 646A.115.
18 (qqq) Violates a provision of ORS 646A.405.
19 (rrr) Violates ORS 646A.092.
20 (sss) Violates a provision of ORS 646.644.
21 (ttt) Violates a provision of ORS 646A.295.
22 (uuu) Violates section 3, chapter 52, Oregon Laws 2012.
23 **(vvv) Violates ORS 702.012, 702.032 or 702.054 or section 3 of this 2013 Act.**
24 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-
25 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.
26 (3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney
27 need not prove competition between the parties or actual confusion or misunderstanding.
28 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-
29 torney General has first established a rule in accordance with the provisions of ORS chapter 183
30 declaring the conduct to be unfair or deceptive in trade or commerce.
31 (5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought
32 under subsection (1)(xx) of this section by a person other than a prosecuting attorney, relief is lim-
33 ited to an injunction and the prevailing party may be awarded reasonable attorney fees.
34 **SECTION 9.** ORS 702.065 is amended to read:
35 702.065. In applying and construing ORS 702.005 to 702.065, 702.991 and 702.994, the courts, a
36 **prosecuting attorney as defined in ORS 646.605** and the Department of Education shall give
37 consideration to the need to promote uniformity of the law with respect to its subject matter among
38 states that have enacted the Uniform Athlete Agents Act.
39