

House Bill 3296

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 **as introduced**.

Modifies, for purposes of regulating student athlete agents, definitions of "agency contract" and "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.

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 and 702.065.

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

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

5 702.005. As used in ORS 702.005 to 702.065, 702.991 and 702.994:

6 (1) "Agency contract" means *[an]*:

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

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

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

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

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

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

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

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

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

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

9 [(6)] (7) "Intercollegiate sport" means a sport played at the collegiate level for which eligibility
 10 requirements for participation by a student athlete are established by a national association for the
 11 promotion or regulation of collegiate athletics.

12 [(7)] (8) "Person" means an individual, corporation, business trust, estate, trust, partnership,
 13 limited liability company, association, joint venture, public body, as defined in ORS 174.109, or any
 14 other legal or commercial entity.

15 [(8)] (9) "Professional sports services contract" means an agreement under which an individual
 16 is employed, or agrees to render services, as a player on a professional sports team, with a profes-
 17 sional sports organization or as a professional athlete.

18 [(9)] (10) "Record" means information that is inscribed on a tangible medium or that is stored
 19 in an electronic or other medium and is retrievable in perceivable form.

20 [(10)] (11) "Registration" means registration as an athlete agent pursuant to ORS 702.005 to
 21 702.065, 702.991 and 702.994.

22 [(11)] (12) "State" means a state of the United States, the District of Columbia, Puerto Rico, the
 23 United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the
 24 United States.

25 [(12)] (13) "Student athlete" means an individual **attending school within this state** who en-
 26 gages in, is eligible to engage in or may be eligible in the future to engage in any **interscholastic**
 27 **or** intercollegiate sport. If an individual is permanently ineligible to participate in a particular
 28 **interscholastic or** intercollegiate sport, the individual is not a student athlete for purposes of that
 29 sport.

30 **SECTION 2. Section 3 of this 2013 Act is added to and made a part of ORS 702.005 to**
 31 **702.065.**

32 **SECTION 3. (1) Before initiating contact with a student athlete, an athlete agent shall**
 33 **provide written notice to the educational institution at which the student athlete is enrolled**
 34 **or admitted. Notice provided under this subsection must state that the athlete agent intends**
 35 **to contact a student at the educational institution.**

36 **(2) The written notice required by subsection (1) of this section may be delivered by**
 37 **electronic mail, facsimile or other electronic means.**

38 **SECTION 4. ORS 646.608, as amended by section 6, chapter 52, Oregon Laws 2012, is amended**
 39 **to read:**

40 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-
 41 ness, vocation or occupation the person does any of the following:

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

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

45 (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-

1 ciation with, or certification by, another.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (v) Violates any of the provisions relating to auction sales, auctioneers or auction marts under
44 ORS 698.640, whether in a commercial or noncommercial situation.

45 (w) Manufactures mercury fever thermometers.

- 1 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
 2 law, or is:
- 3 (A) Prescribed by a person licensed under ORS chapter 677; and
 4 (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and
 5 on the proper cleanup of mercury should breakage occur.
- 6 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
 7 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
 8 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
 9 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
 10 graph, “thermostat” means a device commonly used to sense and, through electrical communication
 11 with heating, cooling or ventilation equipment, control room temperature.
- 12 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains
 13 mercury light switches.
- 14 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.
 15 (bb) Violates ORS 646A.070 (1).
 16 (cc) Violates any requirement of ORS 646A.030 to 646A.040.
 17 (dd) Violates the provisions of ORS 128.801 to 128.898.
 18 (ee) Violates ORS 646.883 or 646.885.
 19 (ff) Violates ORS 646.569.
 20 (gg) Violates the provisions of ORS 646A.142.
 21 (hh) Violates ORS 646A.360.
 22 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
 23 (jj) Violates ORS 646.563.
 24 (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.
 25 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
 26 thereto.
 27 (mm) Violates ORS 646A.210 or 646A.214.
 28 (nn) Violates any provision of ORS 646A.124 to 646A.134.
 29 (oo) Violates ORS 646A.095.
 30 (pp) Violates ORS 822.046.
 31 (qq) Violates ORS 128.001.
 32 (rr) Violates ORS 646.649 (2) to (4).
 33 (ss) Violates ORS 646A.090 (2) to (4).
 34 (tt) Violates ORS 87.686.
 35 (uu) Violates ORS 646.651.
 36 (vv) Violates ORS 646A.362.
 37 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
 38 (xx) Violates ORS 180.440 (1) or 180.486 (1).
 39 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
 40 (zz) Violates ORS 87.007 (2) or (3).
 41 (aaa) Violates ORS 92.405 (1), (2) or (3).
 42 (bbb) Engages in an unlawful practice under ORS 646.648.
 43 (ccc) Violates ORS 646A.365.
 44 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
 45 (eee) Sells a gift card in violation of ORS 646A.276.

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