

Introduced by Senator Ayala

December 19, 1996

An act to amend Sections 18895.2 and 18897.63 of, to add Sections 18897.1 and 18897.97 to, and to add Article 1.5 (commencing with Section 18896) to Chapter 2.5 of Division 8 of, the Business and Professions Code, relating to athlete agents.

LEGISLATIVE COUNSEL'S DIGEST

SB 94, as introduced, Ayala. Athlete agents: disclosure.

(1) Existing law, the Miller-Ayala Athlete Agents Act, provides for the regulation of the activities of athlete agents, as specified.

This bill would, in addition, do all of the following:

(a) Expand certain regulatory exemptions from provisions of the act to include an individual acting solely as an agent for a foster child or ward.

(b) Require athlete agents, prior to engaging in or carrying on the business of an athlete agent, to file specified disclosures with the Secretary of State concerning the athlete agent and each individual acting as an athlete agent within a firm, company, or partnership, and make related changes, as specified.

(c) Require the payment of filing fees, as specified, to be paid into the State Treasury to the credit of the Business Fees Fund of the Secretary of State.

A violation of specified provisions of the Miller-Ayala Athlete Agents Act would subject an athlete agent to civil and criminal penalties. By expanding the scope of conduct subject

to existing criminal penalties, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 18895.2 of the Business and
2 Professions Code is amended to read:

3 18895.2. The following definitions govern the
4 construction of this chapter:

5 (a) "Agent contract" means any contract or
6 agreement pursuant to which a person authorizes or
7 empowers an athlete agent to negotiate or solicit on
8 behalf of the person with one or more professional sports
9 teams or organizations for the employment of the person
10 by one or more professional sports teams or organizations,
11 or to negotiate or solicit on behalf of the person for the
12 employment of the person as a professional athlete.

13 (b) (1) "Athlete agent" means any person who,
14 directly; or indirectly, recruits or solicits an athlete to
15 enter into any agent contract, endorsement contract,
16 financial services contract, or professional sports services
17 contract, or for compensation procures, offers, promises,
18 attempts, or negotiates to obtain employment for any
19 person with a professional sports team or organization or
20 as a professional athlete.

21 (2) "Athlete agent" does not include a person licensed
22 as an attorney, dealer in securities, financial planner,
23 insurance agent, real estate broker or sales agent, or tax
24 consultant, or other professional person, when the
25 professional person offers or provides the type of services
26 customarily provided by that profession, except and
27 solely to the extent that the professional person also



1 recruits or solicits an athlete to enter into any agent
2 contract, endorsement contract, or professional sports
3 services contract, or for compensation procures, offers,
4 promises, attempts, or negotiates to obtain employment
5 for any person with a professional sports team or
6 organization or as a professional athlete. “Athlete agent”
7 does not include any person acting solely on behalf of a
8 professional sports team or organization.

9 (3) Sections 18896.6, 18897.6, and 18897.63 do not apply
10 to an individual acting as an athlete agent solely for his or
11 her spouse, child, *foster child*, *ward*, or grandchild.

12 (c) “Employment as a professional athlete” includes
13 employment pursuant to an endorsement contract or a
14 professional sports services contract.

15 (d) “Endorsement contract” means any contract or
16 agreement pursuant to which a person is employed or
17 receives remuneration for any value or utility that the
18 person may have because of publicity, reputation, fame,
19 or following obtained because of athletic ability or
20 performance.

21 (e) “Financial services” means the making or
22 execution of an investment or other financial decision, or
23 counseling as to a financial decision.

24 (f) “Negotiate” includes any contact on behalf of any
25 athlete with a professional sports team or organization or
26 on behalf of any person with any other person who
27 employs or potentially may employ the person as a
28 professional athlete, regardless of whether the contact is
29 made in person, in writing, electronically, through
30 representatives or employees, or in any other manner.
31 “Negotiate” also includes being present during any
32 discussion of an endorsement contract or professional
33 sports services contract with representatives of the
34 professional sports team or organization or potential or
35 actual employer.

36 (g) “Person” means any individual, company,
37 corporation, association, partnership, limited liability
38 company, or their agents or employees.

39 (h) “Professional sports services contract” means any
40 contract or agreement pursuant to which a person is



1 employed or agrees to render services as a player on a
2 professional sports team or organization or as a
3 professional athlete.

4 (i) (1) “Student athlete” means any individual
5 admitted to or enrolled as a student, in an elementary or
6 secondary school, college, university, or other
7 educational institution if the student participates, or has
8 informed the institution of an intention to participate, as
9 an athlete in a sports program where the sports program
10 is engaged in competition with other educational
11 institutions.

12 (2) “Student athlete” does not include any person who
13 has entered into a valid agent contract, a valid
14 endorsement contract, or a valid professional sports
15 services’ contract. “Student athlete” does not include any
16 student of a college or university whose eligibility to
17 participate in an intercollegiate sport has terminated, as
18 determined by the governing body of the state or national
19 association for the promotion and regulation of
20 intercollegiate athletics of which the student’s college or
21 university is a member.

22 SEC. 2. Article 1.5 (commencing with Section 18896)
23 is added to Chapter 2.5 of Division 8 of the Business and
24 Professions Code, to read:

25

26 Article 1.5. Public Disclosure

27

28 18896. To assist enforcement of this chapter, each
29 athlete agent, prior to engaging in or carrying on the
30 business of athlete agent, shall file the following
31 information with the Secretary of State, in the form that
32 the Secretary of State shall prescribe, concerning the
33 athlete agent and each individual acting as an athlete
34 agent within a firm, company, or partnership:

35 (a) The name, residence address, social security
36 number, and driver’s license number.

37 (b) The street and address number of all locations
38 where the business of the athlete agent is to be
39 conducted.



1 (c) The name and business address of a designated
2 agent in California for service of process, as required by
3 Section 18897.83.

4 (d) All businesses or occupations engaged in for the
5 two years immediately preceding the date of filing.

6 (e) Any convictions for any of the following:

7 (1) A felony.

8 (2) A misdemeanor involving a violation of this
9 chapter, or Chapter 1 (commencing with Section 1500)
10 of Part 6 of Division 2 of the Labor Code as repealed by
11 Chapter 857 of the Statutes of 1996, or the law of any other
12 state governing athlete agents.

13 (3) Fraud, theft, embezzlement, fraudulent
14 conversion, or misappropriation of property.

15 (f) (1) The name of the insurer providing the security
16 required by Section 18897.87, and the amount of that
17 insurance coverage, if the athlete agent provides some or
18 all of that security in the manner required by
19 subparagraph (A) of paragraph (2) of subdivision (a) of
20 Section 15052 of the Corporations Code.

21 (2) The value and specific location of the security
22 required by Section 18897.87, if the athlete agent provides
23 some or all of that security in the same manner as
24 required by subparagraph (B) of paragraph (2) of
25 subdivision (a) of Section 15052 of the Corporations Code.

26 (g) Any appearances before any disciplinary or
27 professional board, association, secretary, committee, or
28 other entity as a result of disciplinary charges or other
29 allegations of misconduct against the athlete agent or
30 individual, and the outcome of those proceedings.

31 (h) Whether or not any student athlete or any
32 educational institution has been sanctioned, suspended,
33 or declared ineligible to participate in one or more
34 interscholastic or intercollegiate athletic events in any
35 proceeding arising from, or related to, the actions of the
36 athlete agent.

37 (i) All past and present persons on behalf of whom the
38 athlete agent or individual has acted as an athlete agent.

39 (j) The names of any player's associations with whom
40 the athlete agent is registered.



1 (k) At least three references.

2 (l) Affidavits or certificate or completion of any and all
3 formal training or practical experience in any of the
4 following specific areas: contracts, contract negotiation,
5 complaint resolution, arbitration, or civil resolution of
6 contract disputes.

7 (m) The names and residence addresses or all persons
8 financially interested in the operation of the business of
9 the athlete agent, whether as employees, partners,
10 investors, associates, or profit sharers, or in any other
11 manner.

12 (n) A schedule of fees to be charged and collected in
13 the conduct of the athlete agent business.

14 18896.2. (a) Within seven days of the time any
15 information in the filing required by Section 18896
16 changes, the athlete agent shall file revised information
17 in the form that the Secretary of State shall prescribe.

18 (b) No revision of a fee schedule filed pursuant to
19 subdivision (n) of Section 18896 shall be effective until
20 seven days after it is filed pursuant to this section.

21 18896.4. Sections 18896 and 18896.2 do not require the
22 disclosure of information related solely and exclusively to
23 other businesses of the athlete agent.

24 18896.6. Upon making first contact, direct or indirect,
25 with a professional athlete, a student athlete, a student
26 athlete's spouse, parent, foster parent, guardian, sibling,
27 aunt, uncle, grandparent, child, or first cousin, any of the
28 proceeding persons for whom a relationship has been
29 established by marriage, or any person residing in the
30 same place as a student athlete, an athlete agent, or his or
31 her employee or representative, shall provide that person
32 with a written notification stating: "This athlete agent has
33 current public-disclosure information on file with the
34 California Secretary of State as required by the
35 Miller-Ayala Athlete Agents Act, Chapter 2.5
36 (commencing with Section 18895) of Division 8 of the
37 Business and Professions Code, which also includes other
38 protections for athletes. Filing of the required
39 information does not imply approval by the California
40 Secretary of State of the competence of the athlete



1 agent.” The notification shall also include specific
2 instructions on how to obtain the public-disclosure
3 information from the Secretary of State.

4 18896.8. (a) An athlete agent shall pay filing fees in
5 an amount established pursuant to subdivision (b) upon
6 making the filings required by Sections 18896 and 18896.2.

7 (b) The Secretary of State shall set applicable filing
8 fees in the amounts necessary to generate revenue
9 sufficient to cover the costs of administration of this
10 chapter.

11 (c) The fees shall be paid into the State Treasury and
12 credited to the Business Fees Fund of the Secretary of
13 State.

14 SEC. 3. Section 18897.1 is added to the Business and
15 Professions Code, to read:

16 18897.1. The following shall be printed on the first
17 page of every agent contract in boldface type at least two
18 points larger than any other type on the page: “This
19 athlete agent has current public-disclosure information
20 on file with the California Secretary of State as required
21 by the Miller-Ayala Athlete Agents Act, Chapter 2.5
22 (commencing with Section 18895) of Division 8 of the
23 Business and Professions Code, which also includes other
24 protections for athletes. Filing of the required
25 information does not imply approval by the California
26 Secretary of State of the terms and conditions of this agent
27 contract or the competence of the athlete agent.”

28 SEC. 4. Section 18897.63 of the Business and
29 Professions Code is amended to read:

30 18897.63. (a) Except as otherwise provided in this
31 section, no athlete agent or athlete agent’s representative
32 or employee ~~shall~~ *may* make or continue any contact,
33 whether in person, in writing, electronically, or in any
34 other manner, with any student athlete, or any student
35 athlete’s spouse, parent, *foster parent, guardian,*
36 grandparent, child, sibling, aunt, uncle, or first cousin, or
37 any of the preceding persons for whom the relationship
38 has been established by marriage, or any person who
39 resides in the same place as the student athlete, or any
40 representative of any of these persons.



1 (b) An athlete agent or athlete agent's representative
2 or employee may send a student athlete, or any of the
3 other persons described in subdivision (a), written
4 materials, provided that the athlete agent previously has
5 sent, or simultaneously sends, an identical copy of the
6 materials to the principal, president, or other chief
7 administrator of the elementary or secondary school,
8 college, university, or other educational institution to
9 which the student athlete has been admitted or in which
10 the student athlete is enrolled.

11 (c) If a student athlete, or any of the other persons
12 described in subdivision (a), initiates contact with an
13 athlete agent or athlete agent's representative or
14 employee, the athlete agent, representative or employee
15 may continue the contact and make new contacts with
16 that person. No later than the first regular business day
17 after that person first initiates contact, the athlete agent
18 shall notify in writing the principal, president, or other
19 chief administrator of the elementary or secondary
20 school, college, university, or other educational
21 institution to which the student athlete has been
22 admitted or in which the student athlete is enrolled, of
23 that contact. The notification shall describe the nature of
24 the contact.

25 (d) *Any written material as described in subdivision*
26 *(b), and any notification required by subdivision (c),*
27 *shall include the notification required by Section 18896.6.*

28 (e) This section does not apply to any contact between
29 an athlete agent or athlete agent's representative or
30 employee and a student athlete or any of the other
31 persons described in subdivision (a), if and solely to the
32 extent that the contact is initiated by an elementary or
33 secondary school, college, university or other educational
34 institution to which the student athlete has been
35 admitted or in which the student athlete is enrolled.

36 SEC. 5. Section 18897.97 is added to the Business and
37 Professions Code, to read:

38 18897.97. The Secretary of State may, in accordance
39 with Chapter 3.5 (commencing with Section 11430) of
40 Part 1 of Division 3 of Title 2 of the Government Code,



1 adopt, amend, and repeal rules and regulations
2 reasonably necessary for the purpose of administering
3 this chapter and consistent with this chapter.

4 SEC. 6. No reimbursement is required by this act
5 pursuant to Section 6 of Article XIII B of the California
6 Constitution because the only costs that may be incurred
7 by a local agency or school district will be incurred
8 because this act creates a new crime or infraction,
9 eliminates a crime or infraction, or changes the penalty
10 for a crime or infraction, within the meaning of Section
11 17556 of the Government Code, or changes the definition
12 of a crime within the meaning of Section 6 of Article
13 XIII B of the California Constitution.

14 Notwithstanding Section 17580 of the Government
15 Code, unless otherwise specified, the provisions of this act
16 shall become operative on the same date that the act
17 takes effect pursuant to the California Constitution.

