

HOUSE No. 1267

The Commonwealth of Massachusetts

PRESENTED BY:

Steven S. Howitt

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to college athlete compensation.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Steven S. Howitt</i>	<i>4th Bristol</i>	<i>1/17/2023</i>

HOUSE No. 1267

By Representative Howitt of Seekonk, a petition (accompanied by bill, House, No. 1267) of Steven S. Howitt relative to intercollegiate athletic compensation and rights. Higher Education.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 4696 OF 2021-2022.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act relative to college athlete compensation.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 15A of the General Laws, as appearing in the 2018 Official
2 Edition, is hereby amended by adding the following section:-

3 Section 45 (a) A public or private institution of higher education, hereinafter referred to
4 as an institution, shall not uphold any rule, requirement, standard or other limitation, except as
5 otherwise provided for in this section, that prevents a student of that institution participating in
6 intercollegiate athletics from earning compensation as a result of the use of the student's name,
7 image or likeness. Earning compensation pursuant to this section including from the use of a
8 student's name, image or likeness shall not affect the student's scholarship eligibility. For the
9 purposes of this section, a public or private institution of higher education shall include a
10 community college.

11 (b) An athletic association, conference or other group or organization with authority over
12 intercollegiate athletics, including, but not limited to, the National Collegiate Athletic
13 Association, shall not prevent a student of an institution participating in intercollegiate athletics
14 from earning compensation as a result of the use of the student's name, image or likeness.

15 (c) An athletic association, conference, or other group or organization with authority over
16 intercollegiate athletics, including, but not limited to, the National Collegiate Athletic
17 Association, shall not prevent a postsecondary educational institution from participating in
18 intercollegiate athletics as a result of a student athlete earning compensation from third parties
19 for the use of the student's name, image, or likeness.

20 (d) An institution, athletic association, conference or other group or organization with
21 authority over intercollegiate athletics shall not prevent a student-athlete participating in
22 intercollegiate athletics from obtaining professional representation in relation to contracts or
23 legal matters, including, but not limited to, representation provided by athlete agents or legal
24 representation provided by attorneys.

25 (e) Professional representation obtained by student-athletes shall be from persons
26 complying with or registered in the commonwealth pursuant to section 2 of this act.

27 (f) A scholarship from the institution in which a student is enrolled that provides the
28 student with the cost of attendance at that institution is not compensation for purposes of this
29 section. A scholarship shall not be revoked as a result of earning compensation or obtaining
30 athlete agent or legal representation pursuant to this section.

31 (g) A student-athlete shall not enter into a contract or agreement providing compensation
32 to the athlete for use of the athlete's name, image or likeness if a provision of the contract or

33 agreement is in conflict with a provision of the athlete's team contract. A student-athlete who
34 enters into a contract or agreement providing compensation to the athlete for use of the athlete's
35 name, image or likeness shall disclose the contract or agreement to an official of the institution,
36 to be designated by the institution.

37 (h) A new team contract or a renewal or modification of a team contract of an institution's
38 athletic program shall not prevent a student-athlete from using the athlete's name, image or
39 likeness for a commercial purpose when the athlete is not engaged in official team activities.

40 (i) Notwithstanding any other provision set forth in this section, a student-athlete may not
41 receive compensation for use of the student-athlete's name, image, likeness: (i) to the extent that
42 compensation is contingent on enrollment at a particular institution; (ii) for athletic participation,
43 or that is based on athletic achievements or performance milestones; (iii) for services or work
44 that the student-athlete has not actually performed; (iv) from an institution, athletic association,
45 conference or other group or organization with authority over intercollegiate athletics to the
46 student-athlete for the use of the name, image, likeness; and (v) for any other activity that is
47 deemed an impermissible inducement from the institution to the student-athlete under the rules
48 of any athletic association, conference, other group or organization with authority over
49 intercollegiate athletics.

50 SECTION 2 Chapter 9 of the General Laws, as so appearing, is hereby amended by
51 adding the following section:-

52 Section 32. (a) For the purposes of this section the following terms shall, unless the
53 context clearly appears otherwise, have the following meanings: –

54 “Athlete agent”, a person who enters into a contract or agreement with a student-athlete
55 or, directly or indirectly, recruits or solicits a student-athlete to enter into a contract or
56 agreement. Such term includes an individual who represents to the public that the individual is an
57 athlete agent. This term shall not include a spouse, parent, sibling, grandparent or guardian of the
58 student-athlete, or an individual acting solely on behalf of a professional sports team or
59 professional sports organization.

60 “Registration”, registration as an athlete agent pursuant to this section.

61 “Student-athlete”, an individual who engages in, is eligible to engage in or may be
62 eligible in the future to engage in any intercollegiate or interscholastic sport at a public or private
63 institution of higher education.

64 (b) A person shall not act as an athlete agent in commonwealth without holding a
65 certificate of registration issued pursuant to this section.

66 (c) Before being issued a certificate of registration, a person may act as an athlete agent
67 in this state for all purposes except signing a contract or agreement, if: (i) a student-athlete or
68 another person acting on behalf of the student-athlete initiates communication with such
69 individual; and (ii) within 7 days after an initial act as an athlete agent, such individual submits
70 an application for registration as an athlete agent under this section.

71 (d) A contract or agreement between a student-athlete and an athlete agent resulting from
72 conduct in violation of this section shall be void. In the event a student-athlete voids such
73 contract or agreement, the student-athlete shall not be required to pay any consideration under
74 such contract or agreement or to return any consideration received from the athlete agent to
75 induce the student-athlete to enter into the contract or agreement, and the athlete agent shall be

76 required to return any consideration received pursuant to such voided contract or agreement. Any
77 contract or agreement under this section shall be void and unenforceable unless it is in writing
78 and executed by the athlete agent and the student-athlete.

79 (e) An applicant for registration shall submit an application therefor to the state secretary
80 in such form as shall be prescribed by the state secretary. An application filed pursuant to this
81 section shall be a public record. The application shall be in the name of an individual and signed
82 or otherwise authenticated by the applicant under penalty of perjury, and shall include, but is not
83 limited to, the following:

84 (i) the name of the applicant and the address of the applicant's principal place of
85 business;

86 (ii) the name of the applicant's business or employer, if applicable;

87 (iii) any business or occupation engaged in by the applicant for the 5 years next preceding
88 the date of submission of the application;

89 (iv) a description of the applicant's: (1) formal training as an athlete agent; (2) practical
90 experience as an athlete agent; and (3) educational background relating to the applicant's
91 activities as an athlete agent;

92 (v) the names and addresses of 3 individuals not related to the applicant who are willing
93 to serve as references;

94 (vi) the name, sport and last known team for each individual for whom the applicant
95 acted as an athlete agent during the 5 years next preceding the date of submission of the
96 application;

97 (vii) the names and addresses of all persons who are: (1) with respect to the athlete
98 agent's business if it is not a corporation, the partners, members, officers, managers, associates
99 or profit-sharers having an interest of 5 percent or greater of the business; and (2) with respect to
100 a corporation employing the athlete agent, the officers, directors and any shareholder of the
101 corporation having an interest of 5 per cent or greater;

102 (viii) whether the applicant or any person named pursuant to clause (vii) has been
103 convicted of a crime that, if committed in this state, would be a crime involving moral turpitude
104 or a felony, and identify the crime;

105 (ix) whether there has been any administrative or judicial determination that the applicant
106 or any person named pursuant to clause (vii) has made a false, misleading, deceptive or
107 fraudulent representation;

108 (x) any instance in which the conduct of the applicant or any person named pursuant to
109 clause (vii) resulted in the imposition of a sanction, suspension or declaration of ineligibility to
110 participate in an interscholastic or intercollegiate athletic event on a student-athlete or
111 educational institution;

112 (xi) any sanction, suspension or disciplinary action taken against the applicant or any
113 person named pursuant to clause (vii) of this subsection by a governmental or quasi-
114 governmental licensing entity or adjudicatory process arising out of occupational or professional
115 conduct; and

116 (xii) whether there has been any denial of an application for, suspension or revocation of,
117 or refusal to renew the registration or licensure of the applicant or any person named pursuant to
118 clause (vii) as an athlete agent in any state.

119 (f) An individual who has submitted an application for, and holds a certificate of,
120 registration or licensure as an athlete agent in another state, may submit a copy of the application
121 and certificate in lieu of submitting an application, or an application of renewal, in the form
122 prescribed by the state secretary. The state secretary shall accept the application and the
123 certificate from the other state as an application for registration in this state if the application to
124 the other state:

125 (i) was submitted in the other state within 6 months next preceding the submission of the
126 application in this state and the applicant certifies that the information contained in the
127 application is current;

128 (ii) contains information substantially similar to or more comprehensive than that
129 required in an application submitted in this state; and

130 (iii) was signed by the applicant under penalty of perjury.

131 (g) Except as otherwise provided in this section, the state secretary shall issue a
132 certificate of registration to an individual who complies the requirements of this section.

133 (h) The state secretary may refuse to issue a certificate of registration if the state secretary
134 determines that the applicant has engaged in conduct that has an adverse effect on the applicant's
135 fitness to act as an athlete agent. In making the determination, the state secretary may consider
136 whether the applicant has:

137 (i) been convicted of a crime that, if committed in this state, would be a crime
138 involving moral turpitude or a felony;

139 (ii) made a materially false, misleading, deceptive or fraudulent representation in
140 the application or as an athlete agent;

141 (iii) engaged in conduct that would disqualify the applicant from serving in a
142 fiduciary capacity;

143 (iv) engaged in conduct prohibited by this section;

144 (v) had a registration or licensure as an athlete agent suspended, revoked or
145 denied, or been refused renewal of registration or licensure as an athlete agent in any state;

146 (vi) engaged in conduct the consequence of which was that a sanction, suspension
147 or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event
148 was imposed on a student-athlete or educational institution; or

149 (vii) engaged in conduct that significantly adversely reflects on the applicant's
150 credibility, honesty or integrity.

151 (i) A certificate of registration or a renewal of a registration shall be valid for 2 years.

152 (j) The state secretary may suspend, revoke or refuse to renew a registration for conduct
153 that would have justified denial of registration under this section.

154 (k) The state secretary may deny, suspend, revoke or refuse to renew a certificate of
155 registration or licensure only after proper notice and an opportunity for a hearing as provided
156 pursuant to the provisions of chapter 30A.

157 (l) An application for registration or renewal of registration shall be accompanied by a fee
158 to be determined by the commissioner of administration pursuant to section 3B of chapter 7.

159 (m) A contract or agreement between an athlete agent and a student athlete shall be in a
160 record, signed or otherwise authenticated by the parties. The contract or agreement shall include,
161 but not limited to, the following:

162 (i) the amount and method of calculating the consideration to be paid by the student-
163 athlete for services to be provided by the athlete agent under the contract or agreement and any
164 other consideration the athlete agent has received or will receive from any other source for
165 entering into the contract or agreement or for providing the services;

166 (ii) the name of any person not listed in the application for registration or renewal of
167 registration who will be compensated because the student-athlete signed the contract or
168 agreement;

169 (iii) a description of any expenses that the student athlete agrees to reimburse;

170 (iv) a description of the services to be provided to the student athlete;

171 (v) the duration of the contract or agreement; and

172 (vi) the date of execution.

173 (n) A student athlete may cancel a contract or agreement with an athlete agent by giving
174 notice of the cancellation to the athlete agent in a record within 10 days after the contract or
175 agreement is signed.

176 (o) A student athlete may not waive the right to cancel a contract or agreement with an
177 athlete agent.

178 (p) If a student athlete cancels a contract or agreement with an athlete agent, the student
179 athlete shall not be required to pay any consideration under such contract or agreement to return
180 any consideration received from the athlete agent to induce the student-athlete to enter into the
181 contract or agreement, unless such cancellation is pursuant to subsection (n) of this section.

182 (q) An athlete agent shall retain the following records for a period of 5 years:

183 (i) the name and address of each individual represented by the athlete agent;

184 (ii) any contract or agreement entered into by the athlete agent; and

185 (iii) any direct costs incurred by the athlete agent in the recruitment or solicitation of a
186 student-athlete to enter into a contract or agreement.

187 The records required to be retained pursuant this section shall be open to inspection by
188 the state secretary during normal business hours.

189 The athlete agent shall give a record of the signed or otherwise authenticated contract or
190 agreement to the student athlete at the time of execution.

191 (r) An athlete agent, with the intent to induce a student-athlete to enter into a contract or
192 agreement, shall not:

193 (i) give any materially false or misleading information or make a materially false promise
194 or representation;

195 (ii) furnish anything of value to a student-athlete before the student-athlete enters into the
196 contract or agreement; or

197 (iii) furnish anything of value to any other individual or another registered athlete agent
198 before the student-athlete enters into the contract or agreement;

199 (s) An athlete agent shall not willfully:

200 (i) initiate contact with a student-athlete unless registered pursuant to this section;

201 (ii) refuse or fail to retain or permit inspection of the records required to be retained by
202 this section;

203 (iii) fail to register when required by this section;

204 (iv) provide materially false or misleading information in an application for registration
205 or renewal of registration; or

206 (s) predate or postdate a contract or agreement with a student athlete.

207 (t) The state secretary may assess a civil penalty against an athlete agent not to exceed
208 \$25,000 for a violation of the registration provisions of this section.

209 (u) Athlete agents representing student-athletes shall comply with the federal Sports
210 Agent Responsibility and Trust Act, established in chapter 104 of title 15 of the United States
211 Code, in their relationships with student-athletes