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Spring 4-21-2024

## The Deception of Student Athlete Protection: The Failures of the Miller-Ayala Athlete Agents Act in the Age of NIL

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### Recommended Citation

Matthew R. Hand, *The Deception of Student Athlete Protection: The Failures of the Miller-Ayala Athlete Agents Act in the Age of NIL*, 44 Loy. L.A. Ent. L. Rev. 61 (2024).

Available at: <https://digitalcommons.lmu.edu/elr/vol44/iss2/1>

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**THE DECEPTION OF STUDENT ATHLETE  
PROTECTION: THE FAILURES OF THE MILLER-  
AYALA ATHLETE AGENTS ACT  
IN THE AGE OF NIL**

*By Matthew R. Hand*

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## I. INTRODUCTION

On June 30, 2021, the National Collegiate Athletic Association (“NCAA”) adopted an interim policy giving student athletes the right to earn compensation from their name, image, and likeness (“NIL”).<sup>1</sup> Since this policy’s adoption, the NIL industry has exploded and is presently worth a projected \$1.14 billion.<sup>2</sup> While the advent of NIL has allowed student athletes to collectively generate billions of dollars in revenue, it has also created opportunities for exploitative companies and deceitful agents to capitalize on young and unsuspecting athletes.<sup>3</sup>

The exploitation of student athletes is not uncommon in collegiate athletics, dating back decades.<sup>4</sup> To deal with this immoral epidemic plaguing the industry, the vast majority of state legislatures have instituted regulations limiting an agent’s ability to conduct business.<sup>5</sup> However, in California, the

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1. Michelle Brutlag Hosick, *NCAA Adopts Interim Name, Image and Likeness Policy*, NCAA (Jun. 30, 2021, 4:20 PM), <https://www.ncaa.org/news/2021/6/30/ncaa-adopts-interim-name-image-and-likeness-policy.aspx> [<https://perma.cc/M6ZY-FDQP>].

2. Kori Hale, *How NIL Diversity Is Driving the Market Up to \$1.1 Billion*, FORBES (Mar. 10, 2023, 8:00 AM), <https://www.forbes.com/sites/korihale/2023/03/10/how-nil-diversity-is-driving-the-market-up-to-11-billion/?sh=58698af560b2> [<https://perma.cc/998F-LJ5R>].

3. See, e.g., Kit Ramgopal et al., *‘There’s No Rules. It’s Crazy’: New Money in NCAA Recruiting Leaves Elite Athletes Ripe for Exploitation*, NBC NEWS (Nov. 27, 2022, 5:00 AM), <https://www.nbcnews.com/news/us-news/star-high-school-athletes-can-now-profit-nil-deals-rcna51075> [<https://perma.cc/RT88-3T42>] (noting that some athletes have received contract offers from agents with exorbitant 40% commission fees); Leah Vann, *One Week Into NIL, Lawyers Caution Athletes on Barstool, YOKE Gaming and Misinformation that Could Affect Iowa Athletes*, THE GAZETTE (Aug. 27, 2021, 1:24 PM), <https://www.thegazette.com/iowa-hawkeyes/one-week-into-nil-lawyers-caution-athletes-on-barstool-yoke-gaming-and-misinformation-that-could-a/> [<https://perma.cc/2CF2-CZKX>] (noting that some companies are acquiring irrevocable NIL rights in consideration of company merchandise or a \$20 payment).

4. See, e.g., Danny Hakim, *Michigan Punishes Basketball Program*, N.Y. TIMES (Nov. 8, 2002), <https://www.nytimes.com/2002/11/08/sports/ncaabasketball/michigan-punishes-basketball-program.html> [<https://perma.cc/PQ9J-S6SF>] (explaining that Michigan basketball players forfeited every win over five seasons because boosters made improper payments to members of the team).

5. See *Athlete Agents Act*, UNIF. L. COMM’N (2019), <https://www.uniformlaws.org/committees/community-home?communitykey=cef8ae71-2f7b-4404-9af5-309bb70e861e> [<https://perma.cc/AK6J-RFFY>] (42 states have enacted the Unif. Athlete Agents Act of 2000).

current agent regulations exhibit a degree of control so immense that they run counter to their goal of protecting student athletes.<sup>6</sup>

The California State Legislature enacted the Miller-Ayala Athlete Agents Act (“Act”) in 1996.<sup>7</sup> Backed by examples of agents illegally paying student athletes and circumventing punishment, this Act was created to curtail unscrupulous agents and their purported shady practices.<sup>8</sup> In support of this bill, Assembly Member Gary Miller went so far as to liken sports agents’ practices to those of drug dealers who “prey on kids, often times ruining their lives,” for the sake of profit.<sup>9</sup> Miller also argued that these practices cause a loss of revenue from collegiate sports and indirectly victimize teammates, universities, and students.<sup>10</sup>

However, critics of the Act noted that when the statute went into effect on January 1, 1997, there existed 558 instances of NCAA-imposed sanctions on schools for major infractions of improper benefits, none of which involved an agent’s misconduct.<sup>11</sup> It is evident that the universities themselves, not agents, are to blame. Nevertheless, in 2011, the California State Legislature enacted SB 238, amending the Act to impose stricter penalties on agents, including a \$50,000 fine and up to one year of imprisonment for violating any provision of the Act.<sup>12</sup>

Former State Senator and sponsor of SB 238 Kevin De León noted that the “bill seeks to remove unscrupulous agents from practice” and its penalties are “aimed at deterring improper conduct before it starts.”<sup>13</sup> While De

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6. *See infra* Part II (arguing that the language of the Miller-Ayala Athlete Agents Act indirectly deprives student athletes of legal guidance and creates instances where student athletes who enter into nonconforming contracts lose their protections provided to them under the Act).

7. CAL. BUS. & PROF. CODE § 18895 (West 1997).

8. Cal. B. Analysis, A.B. 1987 Assemb., Reg. Sess. (Aug. 19, 1996).

9. Cal. B. Analysis, A.B. 1987 Assemb., Reg. Sess. (Apr. 8, 1996).

10. *Id.*

11. Robert A. Baker, *The Unintended Consequence of the Miller-Ayala Athlete Agents Act: Depriving Student Athletes of Effective Legal Representation*, 12(2) UCLA ENT. L. REV. 267, 268 (2005).

12. S.B. 238, 2011 Leg., Reg. Sess. (Cal. 2011).

13. STAFF ON ASSEMB. COMM. ON ARTS, ENT., SPORTS, TOURISM, AND INTERNET MEDIA, 112TH CONG., ANALYSIS OF S.B. 238, at 6 (2011) [hereinafter ANALYSIS OF S.B. 238].

León's goals are commendable, the Act has yet to be enforced in its twenty-six year history.<sup>14</sup> Designed initially to restrict improper benefits to student athletes, the Act fails to deliver on its promise of student athlete protection in the new era of NIL.<sup>15</sup> The Act limits the number of attorneys from which student athletes can choose, fails to properly include all student athletes in its definition of a "student athlete," and omits necessary requirements such as educational programs that assist student athletes in navigating the NIL space.

## II. ISSUES STEMMING FROM THE ACT'S LANGUAGE

### A. *The Definition of an Athlete Agent*

The Act defines an "athlete agent" as:

Any person who, directly or indirectly, recruits or solicits an athlete to enter into any agent contract, endorsement contract, financial services contract, or professional sports services contract, or for compensation procures, offers, promises, attempts, or negotiates to obtain employment for any person with a professional sports team or organization or as a professional athlete.<sup>16</sup>

Critics of the Act attack its overly broad definition of an "athlete agent" and its definition of "negotiate," which includes "being present during any discussion of an endorsement contract or professional sports services contract with representatives of the professional sports team or organization or potential or actual employer."<sup>17</sup> Likely, this definition is intentionally broad to prevent agents from circumventing the Act, but it overextends its reach and imposes egregious regulations upon all California attorneys.

Further, the Act lays out an exemption for attorneys in Section 18895.2(b)(2)(A):

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14. Gary Klein, *State Lawmakers Take a Long Look at College Athletes and Sports Agents*, L.A. TIMES (May 12, 2011, 12:00 AM), <https://www.latimes.com/sports/la-xpm-2011-may-12-la-sp-0513-sports-agents-20110513-story.html> [<https://perma.cc/73LJ-QWUP>] (noting that the Act has not been enforced since its enactment. Currently, no other recent source indicates any enforcement of the Act).

15. ANALYSIS OF S.B. 238 at 5.

16. CAL. BUS. & PROF. CODE § 18895.2 (West 2020).

17. *Id.*

“Athlete agent” does not include a person licensed as an attorney, [...] or other professional person, when the professional person offers or provides the type of services customarily provided by that profession, except and solely to the extent that the professional person also recruits or solicits an athlete to enter into any agent contract, endorsement contract, or professional sports services contract, or for compensation procures, offers, promises, attempts, or negotiates to obtain employment for any person with a professional sports team or organization or as a professional athlete.<sup>18</sup>

The final clause of this exception renders the entire paragraph inapplicable to attorneys. Some of an attorney’s many duties are to provide guidance and negotiate on behalf of their client in business transactions.<sup>19</sup> Suppose a student athlete wishes to retain counsel for these services in a traditional NIL transaction. In that case, the attorney is not exempted as an athlete agent under the Act because his or her duties to procure and negotiate contracts fall within the last clause of 18895.2(b)(2)(A).<sup>20</sup> Further reading of the statute reveals the definition of “employment as a professional athlete” to mean “employment pursuant to an endorsement contract or a professional sports services contract.”<sup>21</sup> It follows then that an attorney’s powers are limited to the restrictions of this Act in all student athlete matters regarding NIL.

One major limitation imposed upon attorneys is the requirement that each athlete agent registers with the state.<sup>22</sup> Sections 18896 and 18897.87 of the Act require athlete agents to disclose personal information such as their residential address and social security number, pay a filing fee to the state, and obtain security of at least \$100,000, among myriad other obligations.<sup>23</sup>

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18. CAL. BUS. & PROF. CODE § 18897.73 (West 2020).

19. U.S. Bureau of Lab. Stat., *Lawyers: Occupational Outlook Handbook*, U.S. BUREAU OF LAB. STAT. (Sep. 6, 2023), <https://www.bls.gov/ooh/legal/lawyers.htm> [<https://perma.cc/59U9-HU2H>].

20. BUS. & PROF. § 18895.2.

21. *Id.*

22. CAL. BUS. & PROF. CODE § 18896 (West 1997).

23. *Id.*; CAL. BUS. & PROF. CODE § 18897.87 (West 2020) (additionally requiring disclosure of any previous sanctions, convictions, former businesses, former clients, all names and

Therefore, if a student athlete wishes to obtain legal counsel to assist them in NIL matters, the attorney must first undertake burdensome steps to comply with the Act. The inconvenience caused by these requirements likely dissuades attorneys from counseling athletes, thus severely limiting the pool of attorneys from which an athlete can choose.

The Act also dissuades attorneys due to the strict punishments imposed by Kevin De León in SB 238.<sup>24</sup> The Act's language requires precise navigation in order to be compliant.<sup>25</sup> Any slip-up not only voids a contract between the attorney-agent and the student athlete, but also subjects the attorney to the threat of (1) criminal liability, (2) a potential \$50,000 fine, (3) imprisonment, and (4) disgorgement of all consideration received from the student athlete.<sup>26</sup> Because simply initiating a conversation with a student athlete is enough to constitute a violation, one cannot seriously consider these draconian policies sensible.<sup>27</sup> No reasonable attorney would risk subjecting themselves to these penalties by representing a student athlete since the Act's broad definition likely sweeps all attorneys who work with student athletes under its classification of an athlete agent.<sup>28</sup>

### B. *The Definition of a Student Athlete*

In addition to the broad explanation of what constitutes an athlete agent, the Act provides a confusing and worrisome definition of a student athlete.<sup>29</sup> According to the Act, a "student athlete" is defined as:

Any individual admitted to or enrolled as a student, in an elementary or secondary school, college, university, or other educational institution if the student participates, or has informed the

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residential addresses of financially interested parties, a schedule of fees, and a seven-day filing requirement for any change in information accompanied by a filing fee).

24. S.B. 238, 2011 Leg., Reg. Sess. (Cal. 2011).

25. *Id.*

26. *Id.* (imposing additional civil liability upon athlete agents for any damages to student athletes or schools as a result of their actions).

27. See CAL. BUS. & PROF. CODE § 18897.63 (West 2022).

28. *Id.*

29. See CAL. BUS. & PROF. CODE §§ 18895–18897.97 (West 2020).

institution of an intention to participate, as an athlete in a sports program where the sports program is engaged in competition with other educational institutions.<sup>30</sup>

However, the Act also states that a student athlete “does not include any person who has entered into a valid agent contract, a valid endorsement contract, or a valid professional sports services contract, unless that contract is entered into in accordance with subdivision (b) of Section 18897.73.”<sup>31</sup>

Under Section 18897.73, the contract must contain a written warning to the student athlete regarding a potential loss of NCAA eligibility.<sup>32</sup> If this warning does not appear, the contract may remain compliant with this section if the contract complies with NCAA bylaws and is approved by the educational institution.<sup>33</sup> This language is particularly alarming because it creates the possibility for a student athlete to no longer be considered a “student athlete” under the Act.

Consider the following hypothetical: a student athlete at a California university is approached by a company and offered money to promote that company’s product on the student athlete’s social media account. The company provides the student athlete a contract omitting the warning required by Section 18897.73. The student athlete signs the contract and either fails to report it to their university or reports it, but the university does not authorize the contract.

While this transaction may appear straightforward on its face, the hypothetical student athlete disqualified themselves from being considered a “student athlete” under the Act because they entered into a valid endorsement contract, the contents of which did not conform to Section 18897.73.<sup>34</sup> Thus, if an agent works with this hypothetical student athlete, the agent would not be subject to any of the Act’s regulations. This scenario creates a litany of problems for the student athlete, but the following two examples highlight those most impactful problems and exemplify the critical flaws of the student athlete definition.

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30. BUS. & PROF. § 18895.2.

31. *Id.*

32. CAL. BUS. & PROF. CODE § 18897.73 (West 2020).

33. *Id.*

34. *Id.*



## 1. The Inability to Rescind an Inadequate Contract

One of the most critical protections for student athletes under the Act exists in Section 18897.77, which allows student athletes fifteen (15) days to rescind any contract.<sup>35</sup> This provision helps protect student athletes from corrupt agents charging exorbitant commissions and from companies obtaining the student athlete's NIL rights for negligible compensation.<sup>36</sup> Thus, any student athlete who previously signed a contract not in conformance with Section 18897.73 puts themselves in grave danger of exploitation without remedy.<sup>37</sup>

## 2. No Liability for Disqualification Caused by Agents

The Act attempts to protect student athletes' NCAA amateur status by prohibiting athlete agents from providing improper benefits to student athletes.<sup>38</sup> These prohibitions, however, are unenforceable if the student athletes have lost their protection.<sup>39</sup> Suppose an agent is aware of the fact that a student athlete has lost protection. In that case, the agent can provide benefits such as cash or other valuable items to the student athlete in exchange for the

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35. CAL. BUS. & PROF. CODE § 18897.77 (West 1997).

36. See Kit Ramgopal et al., *'There's No Rules. It's Crazy': New Money in NCAA Recruiting Leaves Elite Athletes Ripe for Exploitation*, NBC NEWS (Nov. 27, 2022, 5:00 AM), <https://www.nbcnews.com/news/us-news/star-high-school-athletes-can-now-profit-nil-deals-rcna51075> [<https://perma.cc/RT88-3T42>]; Leah Vann, *One Week Into NIL, Lawyers Caution Athletes on Barstool, YOKE Gaming and Misinformation That Could Affect Iowa Athletes*, THE GAZETTE (Aug. 27, 2021, 1:24 PM), <https://www.thegazette.com/iowa-hawkeyes/one-week-into-nil-lawyers-caution-athletes-on-barstool-yoke-gaming-and-misinformation-that-could-a/> [<https://perma.cc/2CF2-CZKX>].

37. BUS. & PROF. § 18897.77; see also Ramgopal et al., *supra* note 35 (in addition to the exorbitant marketing commission fees, some contracts offered to student athletes functionally operate as loans, which the student is obligated to repay).

38. BUS. & PROF. § 18897.6 (prohibiting athlete agents from providing to student athletes through direct or indirect means any money or other items of benefit or value); see also NCAA Bylaws art. 16.01.2 (prohibiting student athletes or a student athlete's family or friends from receiving any extra benefits or items of value).

39. Under CAL. BUS. & PROF. CODE § 18897, student athletes can lose their protection if they sign any contract that does not conform with Section 18897.73 of the Act. Because the student athlete loses protection, agents are able to operate in direct violation of the Act without being subject to any punishments.

athlete's consent to professional representation without fear of penalty, all while jeopardizing the student athlete's NCAA eligibility.<sup>40</sup>

### III. PROPOSED SOLUTIONS

The Act's failure to protect student athletes in college athletics' ever-changing NIL landscape is evidence of the statute's need for revision. Fortunately, immediate solutions exist to resolve the Act's issues.

#### *A. Change the Act's Language*

Because the Act was written decades before the new dawn of NIL, one can assume the Act's inclusion of endorsement contracts is meant to insinuate that signing an endorsement deal triggers a loss of amateurism.<sup>41</sup> While endorsement deals did lead to a loss of amateurism before 2021, this is not the case today.<sup>42</sup> Removing all references to endorsement contracts from the Act will help alleviate the issue of limited attorney pools. Upon the term's removal, attorneys will no longer be subjected to strict regulations or the looming threat of harsh punishments for violations, making them more inclined to provide guidance to student athletes.<sup>43</sup>

Further, removing references to endorsement contracts will primarily prevent the loss of a student athlete's protection under the Section 18895.2 classification.<sup>44</sup> It is reasonable to assume that the vast majority of instances where a student athlete will lose their protections under the Act involve faulty endorsement contracts, rather than agency contracts where agents are more likely to be knowledgeable of, and compliant with, the law. For these reasons, the California State Legislature should consider removing the

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40. See NCAA Bylaws art. 16.01.1 ("Receipt by a student-athlete of an award, benefit or expense allowance not authorized by NCAA legislation renders the student-athlete ineligible for athletics competition in the sport for which the improper award, benefit or expense was received. If the student-athlete receives an extra benefit not authorized by NCAA legislation, the individual is ineligible in all sports.").

41. NCAA Bylaws art. 12.5.3 (prohibiting student athletes from receiving any remuneration for a public appearance or activity).

42. Michelle Brutlag Hosick, *NCAA Adopts Interim Name, Image and Likeness Policy*, NCAA (Jun. 30, 2021, 4:20 PM), <https://www.ncaa.org/news/2021/6/30/ncaa-adopts-interim-name-image-and-likeness-policy.aspx> [<https://perma.cc/M6ZY-FDQP>].

43. CAL. BUS. & PROF. CODE §§ 18897.81–8897.97 (West 1997).

44. CAL. BUS. & PROF. CODE § 18895.2 (West 2020).

phrase “endorsement contract” from the Act to stay current in the new age of NIL.<sup>45</sup>

A second option to revise the Act’s language is to remove the overly broad attorney “exemption” in Section 18895.2(b)(2)(A).<sup>46</sup> Specifically, the language of this section states that an attorney is still considered an athlete agent if the attorney “...for compensation procures, offers, promises, attempts, or negotiates to obtain employment for any person with a professional sports team or organization or as a professional athlete.”<sup>47</sup> The inclusion of this clause sweeps all attorneys under the classification of an athlete agent and, as such, should be removed.<sup>48</sup> It is already established that this clause indirectly prevents attorneys from acting in their legal capacity to provide standard advice to student athletes. If the Act’s goal is truly to help student athletes, what reasons exist to support the inclusion of this disadvantageous clause?

### B. *Mandate Student Athlete Education Programs*

By solely focusing its attention on agents, the Act fails to address numerous other channels of fraud, resulting in inadequate protection from exploitation for student athletes.<sup>49</sup> Rather than trying to regulate the bad actors, the most effective way to prevent student athletes from falling victim to the numerous industry dangers is to educate them about NIL rules, policies, and practices. Universities should be required to provide significant resources to athletes to make them cognizant of unethical practices by dishonest agents and companies.<sup>50</sup> If executed properly, educating student athletes about NIL

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45. CAL. BUS. & PROF. CODE §§ 18895–18897.97 (West 2020).

46. BUS. & PROF. § 18895.2.

47. *Id.*

48. *See supra* Part II(A) (explaining that the inclusion of the word “negotiates” subjects all attorneys to the classification of an athlete agent because negotiating on behalf of a client in a business transaction is a typical duty of an attorney).

49. *See* Danny Hakim, *Michigan Punishes Basketball Program*, N.Y. TIMES (Nov. 8, 2002), <https://www.nytimes.com/2002/11/08/sports/ncaabasketball/michigan-punishes-basketball-program.html> [<https://perma.cc/PQ9J-S6SF>] (aside from the Michigan basketball scandal, there exist numerous other examples of boosters and schools providing improper benefits to recruits to induce them signing with the school).

50. Lila Bromberg, *In the NIL Arms Race, Some Schools Are Going the Extra Mile to Help Their Athletes*, SPORTS ILLUSTRATED (July 1, 2021), <https://www.si.com/college/2021/07/01/name-image-likeness-programs-schools-ncaa> [<https://perma.cc/WD9T-R8WJ>] (numerous schools

will not only prevent harm, but may also enable student athletes to better understand their market value and develop meaningful skills like communication, networking, and financial literacy to use in the workforce after their playing careers.<sup>51</sup>

### C. *Adopt the Revised Uniform Athlete Agents Act*

The Revised Uniform Athlete Agents Act (“RUAAA”) is a uniform statute adopted by 42 states which regulates athlete agents.<sup>52</sup> Unlike the Act, the RUAAA contains provisions providing sensible solutions to the issues created by the Act.

#### 1. Registration Requirements

One differentiating feature of the RUAAA is its registration requirements.<sup>53</sup> Unlike the Act, the RUAAA’s required disclosures are far less burdensome on athlete agents.<sup>54</sup> The RUAAA does not require the athlete agent to disclose sensitive information like their social security number or residential address.<sup>55</sup> By not requiring the disclosure of this information, attorney-agents can ensure that their personal information stays secure, making them more likely to undertake representation.

Second, the RUAAA does not require the athlete agent to file an amended disclosure. Under the Act, any change in information requires a near-immediate filing with the Secretary of State.<sup>56</sup> Over time, this requirement becomes both tiresome and costly, and any failure to file a disclosure

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like The University of Nebraska, The University of Colorado, and Florida State University provide extensive guidance to their student athletes and work with law and business school students to create in-house programs focused on building student athletes’ knowledge of the NIL landscape).

51. *Id.*

52. REVISED UNIF. ATHLETE AGENTS ACT (NAT’L CONF. OF COMMS. ON UNIF. STATE L. 2015) [hereinafter RUAAA].

53. *Id.*

54. *Id.*

55. *Id.*

56. CAL. BUS. & PROF. CODE § 18896.2 (1998).

constitutes a violation.<sup>57</sup> However, attorneys in RUAAA states need not worry about these potential violations and will save hundreds, if not thousands of dollars in unnecessary filing fees.

Third, the RUAAA establishes a nationwide disclosure system, requiring only one initial filing with a state.<sup>58</sup> If an athlete agent wishes to conduct business in both California and an RUAAA state, the attorney must file two separate documents with each state.<sup>59</sup> However, the RUAAA allows for an athlete agent already registered in an RUAAA state to file a copy with any other RUAAA state in which the athlete agent wishes to conduct business.<sup>60</sup> By eliminating the need to create a wholly new application for every state, the RUAAA eliminates barriers to entry for attorney-agents, providing student athletes with more options for legal guidance.

## 2. Limited Criminal Penalties

In addition to relaxed registration requirements, the RUAAA limits penalties for violations of the statute.<sup>61</sup> Under the RUAAA, agents only face criminal penalties for egregious violations of a particular section which undermine the function of the statute.<sup>62</sup> This provision operates in stark contrast to the Act, under which athlete agents face criminal penalties for violating *any* portion of the Act.<sup>63</sup> By adopting the RUAAA, California can significantly decrease the risk of criminal punishments to attorney-agents, reducing the assumption of risks for practicing lawyers in this space. By reducing the assumption of risk, attorneys are incentivized to enter the athlete agent space, thus improving access to effective legal representation for student athletes.

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57. See S.B. 238, 2011 Leg., Reg. Sess. (Cal. 2011) (in addition to the fear of looming numerous punishments, the removal of the amendment filing requirement under the RUAAA diminishes the constant risk of violating the Act).

58. See RUAAA, *supra* note 51, at 2–3, 16.

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. See ANALYSIS OF S.B. 238 at 1.

#### IV. CONCLUSION

In the new age of NIL, student athletes are increasingly dependent upon the services of attorneys to navigate a confusing, yet promising, environment. Despite the possibilities of seven-figure paydays, student athletes must always be wary of shady business deals possessing potential financial and reputational harms.<sup>64</sup> The California State Legislature has taken on the responsibility of protecting these athletes through the promulgation of the Act.<sup>65</sup> However, lawmakers still need to adjust the statute to fit the new environment. The Act's overreaching language puts student athletes at higher risk in California than in the vast majority of other states by dissuading attorneys from providing guidance and exempting many athletes from the statute's protections.<sup>66</sup>

Rather than allow student athletes to suffer, the California State Legislature must attempt to rectify its own mistakes which threaten student athletes' legal protections and access to counsel. With student athletes actively in danger, serious consideration must be given to revising the Act to exclude certain troublesome terms and exemptions, as well as adding mandated educational programs for student athletes. These revisions will address the Act's immediate issues, grant student athletes access to a greater number of attorneys, and provide student athletes with the requisite knowledge to navigate the dynamic NIL landscape.

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64. See, e.g., Josh Schafer, *College Quarterback's NIL Compensation Nears \$4 Million Amid New NFT Partnership*, YAHOO! FIN. (Oct. 7, 2022), <https://finance.yahoo.com/news/college-quarterbacks-nil-compensation-nft-partnership-200004496.html> [<https://perma.cc/QUN6-4C6G>].

65. See CAL. BUS. & PROF. CODE §§ 18895–18897.97 (West 2020).

66. See *supra* Part II (explaining how the Act's punishments are so severe that they have the effect of pushing attorneys away from the idea of representing student athletes, and that the Act, by providing an exception to the definition of a student athlete, creates the real possibility of a student athlete unknowingly destroying any protections provided in the Act).