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UNIFORM ATHLETE AGENTS ACT

House Bill 4857 (Substitute H-2) First Analysis (2-27-02)

Sponsor: Rep. Andrew Richner
Committee: Commerce

THE APPARENT PROBLEM:

In 1997, the National Collegiate Athletic Association (NCAA) and several major academic institutions asked the National Conference of Commissioners on Uniform State Laws (NCCUSL) if it would undertake to draft a uniform act for use across the country to regulate athlete agents. Athlete agents are the individuals who represent athletes in their dealings with professional sports teams and in related economic activities, such as endorsement contracts. The NCAA's concern stemmed from cases in which student-athletes had lost eligibility to play intercollegiate sports or in which colleges and universities had suffered sanctions due to violations of association rules, typically attributed to the actions of unscrupulous agents and naive student-athletes. While there are sanctions and penalties to impose on students and institutions, there are often few sanctions and penalties that can be imposed on the agents. Some 28 states are said to have tried to address the problem, but their efforts have resulted in a variety of different approaches, lacking consistency and reciprocity between the states. The NCCUSL accepted the NCAA's challenge and has now drafted a uniform act. Organization representatives say that the drafting committee met over a period of three years and sought input from agents, coaches, enforcement officers, and the NCAA, as well as representatives of the players' associations from professional football, hockey, and baseball. In a prefatory note accompanying the uniform act, the NCCUSL says:

In this era in which many professional athletes are highly compensated, their agents perform many valuable services. Concomitantly, the practices of a minority of agents or would-be agents in obtaining the right to represent athletes who may produce substantial fees for their agents have caused serious problems for student-athletes and educational institutions. The tactics of this minority include secret payments or gifts to the athlete, undisclosed payments or gifts to friends and relatives who may be in a position to influence the athlete, unrealistic promises and considerable arm twisting.

Headlines chronicle the results of these practices. Athletes lose eligibility and may damage promising professional careers. Universities and colleges are sanctioned. The sanctions can be very severe and may include loss of, or liability to return, substantial revenues for participation in post-season events. Frequently, the non-monetary sanctions have long-term, adverse effects on athletic programs. Perhaps as important as any other effect, the reputations of respected educational institutions are tarnished and there is a severe disruption in the activities of those responsible for administration of the institutions.

Michigan did enact two laws in 1988 addressing agent and athletic booster behavior in limited ways, but bills attempting to regulate athlete agents and their contracts with student-athletes comprehensively have been before the legislature for more than a decade without being enacted. The NCCUSL model act has been adopted already by about a dozen states and is before the legislature in 16 others, including Michigan. Some people believe Michigan, which has many institutions of higher education with Division I athletic programs, where the problems mostly exist, should adopt the uniform act.

THE CONTENT OF THE BILL:

The bill would create a new act, the Uniform Athlete Agents act, which would:

- Require an individual to be registered with the Department of Consumer and Industry Services before acting as, offering to act as, or holding himself or herself out as, an athlete agent. A registration or a renewal would be valid for two years (although the department could issue a temporary registration while an application for a registration or a renewal was pending).
- Regulate the nature of the contract between an athlete agent and a student-athlete and require that such a contract contain a specific warning to the student-athlete about the possible loss of eligibility

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from signing an agency contract, and contain a notice of the ability of the student-athlete to cancel the contract within 14 days (with the caution that cancellation might not reinstate eligibility).

- Require the athlete agent and the student-athlete to notify the athletic director of the educational institution at which the student is enrolled or intends to enroll of the existence of the agency contract within 72 hours after entering into the contract or before the next scheduled athletic event in which the student-athlete might participate, whichever occurred first.

- Prohibit an athlete agent from engaging in specified activities in order to induce a student-athlete to enter into an agency contract, with a violation to be a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$1,000, or both.

- Grant an educational institution a cause of action for damages against an athlete agent or former student-athlete for damages caused by a violation of the new act.

- Allow the Department of Consumer and Industry Services to assess a civil penalty or administrative fine against an athlete agent not to exceed \$25,000 for a violation of the new act. The department could issue subpoenas for any material relevant to the administration of the act. The department could also promulgate rules to enforce and administer the new act.

- Define an "athlete agent" as an individual who enters into an agency contract with a student-athlete, or directly or indirectly, recruits or solicits a student-athlete to enter into an agency contract, as well as a person who represents to the public that he or she is an athlete agent. The term would not apply to a spouse, parent, sibling, grandparent, or guardian of the student-athlete or an individual acting solely on behalf of a professional sports team or a professional sports organization. The term "student-athlete" would refer to an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport. An individual permanently ineligible to participate in a particular intercollegiate sport would not be considered a student-athlete for the purposes of that sport. An "agency contract" would be defined to refer to an agreement in which a student-athlete authorizes a person to negotiate or solicit on his or her behalf a professional sports-services contract or an endorsement contract.

- Allow a person to act as an athlete agent without being registered for all purposes except signing an agency contract in a case where a student-athlete or a person acting on behalf of a student-athlete initiates communication with the agent and if, within seven days after an initial act as an agent, the individual submits an application for registration as an athlete agent under the new act.

Application for registration. An applicant for registration would have to submit an application to the Department of Consumer and Industry Services. The bill would specify the information to be contained in the application, including the name of the applicant's business or employer, where applicable; any business or occupation engaged in during the previous five years; the applicant's formal training, practical experience, and educational background regarding acting as an athlete agent; three references; the name, sport, and last known team for each individual for whom the applicant acted as an agent during the previous five years; the names and addresses of partners, members, officers, managers, associates, or profit-sharers of the applicant's business, or the officers, directors, and shareholders, with respect to a corporation employing the agent; whether the applicant or someone required to be named on the application had been convicted of a crime that, if committed in Michigan, would be a crime involving moral turpitude or a felony, and identifying the crime, if any; whether there had been any administrative or judicial determination that the applicant or a person required to be named had made a false, misleading, deceptive, or fraudulent presentation; any instance when the conduct of the applicant or a named person resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or educational institution; any sanction, suspension, or disciplinary action taken against the applicant or a named person arising out of occupational or professional conduct; and whether there had been any denial of an application for registration or licensure as an athlete agent in any state for the applicant or a named person or a revocation of a registration or license or a refusal to renew a registration or license. An application for registration would have to be accompanied by payment of a \$30 fee. Renewals, which would follow a similar process, would also require a \$30 fee.

Reciprocal application. The department would accept a copy of application for registration or licensure or a certificate of registration or licensure from another state as an application for registration in

this state if: 1) it had been submitted in the other state within six months preceding the submission of the application in Michigan and the applicant certifies that the information was current; 2) the information was substantially similar to or more comprehensive than required in the application required in this state; and 3) the submission to the other state was signed by the applicant under penalty of perjury.

Registration denials, revocations, etc. The department could deny a registration if it determined that the applicant had engaged in conduct having a significant effect on the applicant's fitness to act as an athlete agent and the department could suspend, revoke, or refuse to renew a registration for conduct that would justify a denial. A registration could only be denied, suspended, revoked, or non-renewed after notice and an opportunity for a hearing under the Administrative Procedures Act. In making a determination, the department could consider whether the applicant had: been convicted of a crime involving moral turpitude or a felony; made a materially false, misleading, deceptive, or fraudulent representation in the application or as an athlete agent; engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity; engaged in prohibited conduct to induce an athlete to enter into a contract; had a registration or license suspended, revoked, denied, or not renewed in any state; engaged in conduct resulting in a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event imposed on a student-athlete or educational institution; or engaged in conduct that significantly adversely reflected on the applicant's credibility, honesty, or integrity. In making the determination, the department would have to consider how recently the conduct occurred; the nature of the conduct and the context in which it occurred; and any other relevant conduct of the applicant.

Content of agency contract. An agency contract would have to be in a record and signed or otherwise authenticated by the parties. The agent would have to give a record of the signed or otherwise authenticated contract to the student-athlete at the time of execution. It would have to contain: the amount and method of calculating the consideration to be paid by the student-athlete for services to be provided by the athlete agent and any other consideration the agent would receive from any other source for entering into the contract or for providing the services; the name of any person not listed in the application for registration (or renewal) who would be compensated as a result of the student-athlete signing the contract; a description of any expenses

the student-athlete agrees to reimburse; a description of the services to be provided; the duration of the contract; and the date of execution.

The contract would also have to contain, in close proximity to the signature of the student-athlete, a conspicuous warning notice in boldfaced type in capital letters. The notice would have to say the following. *Warning to student-athlete if you sign this contract: 1) You may lose your eligibility to compete as a student-athlete in your sport. 2) If you have an athletic director, within 72 hours after entering into this contract, both you and your athlete agent must notify your athletic director. 3) You may cancel this contract within 14 days after signing it. Cancellation of this contract may not reinstate your eligibility.*

If a contract did not substantially conform to the bill's requirements, it would be voidable by the student-athlete. If a student-athlete voided a contract, he or she would not be required to pay any consideration under the contract or to return any consideration received from the agent to induce the student to enter into the contract.

Cancellation of a contract. A student-athlete could cancel an agency contract by giving notice to the athlete agent in a record within 14 days after the contract was signed. A student-athlete could not waive the right to cancel a contract. If a student-athlete cancelled a contract, he or she would not be required to pay any consideration under the contract or to return any consideration received from the agent to induce the student to enter into the contract.

Prohibited acts. An athlete agent would be prohibited from doing any of the following with the intent to induce a student-athlete to enter into a contract: give any materially false or misleading information or make a materially false promise or representation; furnish anything of value to a student-athlete before the student-athlete entered into the contract; furnish anything of value to any individual other than the student-athlete or another registered athlete agent. Further, an agent would be prohibited from intentionally doing any of the following: initiating contact with a student-athlete unless registered under the act; refusing or failing to retain or permit inspection of records required to be maintained; failing to obtain a registration when required; providing materially false or misleading information in an application for registration or renewal; predating or postdating an agency contract; or failing to notify a student-athlete, before the student-athlete signed a contract for a particular sport, that the

signing could make the student-athlete ineligible to participate in that sport.

Committing one of the prohibited acts mentioned above would be a misdemeanor, punishable by imprisonment for up to 93 days or a fine of not more than \$1,000, or both.

Causes of action. An educational institution would have a cause of action against an athlete agent or a former student-athlete for damages caused by a violation of the bill's provisions. In such an action, the court could award to the prevailing party costs and reasonable attorney fees. Damages of an educational institution include losses and expenses incurred caused by the conduct of the athlete agent or former student-athlete, including any penalty, disqualification, or suspension of the institution from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by reasonable self-imposed disciplinary action taken to mitigate sanctions likely to be imposed by such an organization. A cause of action would not accrue until the educational institution discovered or, by the exercise of reasonable diligence, would have discovered the violation by the agent or athlete. Any liability of the agent or former student-athlete would be several and not joint. The bill specifies that it would not restrict rights, remedies, or defenses of any person under law or equity.

Service of process. By acting as an athlete agent in the state, a nonresident individual would appoint the director of the Department of Consumer and Industry Services as the individual's agent for service of process in any civil action in the state related to the individual's acting as an athlete agent. Upon notice to and approval of the department, an athlete agent could designate an in-state agent for acceptance of the service of process.

Effective date. The bill would take effect January 1, 2003.

BACKGROUND INFORMATION:

The National Collegiate Athletic Association describes its Bylaw 12.3 as follows:

A student-athlete (any individual who currently participates in or who may be eligible in the future to participate in intercollegiate sport) may not agree verbally or in writing to be represented by an athlete agent in the present or in the future for the purpose of marketing the student-athlete's ability or reputation.

If the student-athlete enters into such an agreement, the student-athlete is ineligible for intercollegiate competition. Also, a student-athlete may not accept transportation or other benefits from an athlete agent. This prohibition applies to the student-athlete and his or her relatives or friends. The term "agent" includes actual agents and runners (individuals who befriend student-athletes and frequently distribute impermissible benefits). It is not a violation of NCAA rules if a student-athlete merely talks to an agent (as long as an agreement for agent representation is not established) or socializes with an agent. For example, a student-athlete could go to dinner with an agent and no NCAA violations would result if the student-athlete provided his own transportation and paid for his meal.

The National Conference of Commissioners on Uniform State Laws (NCCUSL) describes itself as an organization made up of law commissioners appointed by the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands to study the need for uniform state laws; that is, to determine when uniformity between state laws is desirable. The uniform laws drafted by the commissioners have no force unless adopted by a state legislature. The organization is funded mostly by state appropriations.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

The National Conference of Commissioners on Uniform State Laws (NCCUSL) describes its model Uniform Athlete Agents Act as "important new legislation that protects the interests of student athletes and academic institutions by regulating the activities of athlete agents". The NCCUSL points out that "An athlete agent's recruitment of a student athlete while he or she is still enrolled in an educational institution may cause substantial eligibility problems for both the student and the school. This is especially a concern when a student athlete is not aware of the implications of signing an agency agreement or when agency is established without notice to the school".

Among the beneficial features of the model act are:

- a requirement that athlete agents must be registered with the state (with the assumption that the information regarding their experience, education, and background that an applicant files will be open for public inspection) and reciprocity arrangements that allow an agent registered or licensed in one state to cross-file applications with other states that have adopted the act;
- mandatory notification by agents and student-athletes to the educational institution when an agency contract has been entered into (so that the institution can avoid using an ineligible player);
- the ability of student-athletes to cancel a contract without penalty within 14 days after signing (due to the supposed disparity in the sophistication of the parties to the contract) and the automatic voiding of contracts that fail to contain certain specified features (with the student under no obligation to return any consideration received as an inducement to sign);
- mandatory notification in the contracts themselves to the student-athlete that signing the contract could result in losing eligibility and that the student must notify his or her school of the existence of the contract;
- limitations on agent conduct, including prohibitions on certain kinds of inducements, with misdemeanor penalties, as well as civil penalties and administrative fines, for violations;
- the granting of subpoena power to the state so it can obtain materials needed to administer the model act;
- the creation of a cause of action to educational institutions for damages caused by an athlete agent or a former student-athlete due to a violation of the act.

Against:

In the past, legislation of this kind has encountered several objections. The bill requires the registration of agents but imposes no competency requirements. The public, however, and student-athletes searching for an agent might assume that a person who is a "registered" agent has been approved by the state as competent and qualified. Moreover, generally speaking, the state has resisted efforts in recent years to register any additional occupations, partly because to do so will invite a flood of such requests. There have also been concerns that this kind of legislation ignores the possibility that part of the problem lies with the rules of the governing athletic associations,

the nature of big-time college sports, and the special status of the student-athlete.

POSITIONS:

The National Collegiate Athletic Association (NCAA) supports adoption of the uniform athlete agent act. (From material presented to the House Committee on Commerce on 2-26-02)

Representatives from Western Michigan University's Athletic Department testified in support of the bill. (2-26-02)

The Department of Consumer and Industry Services is opposed to the bill's registration provisions. (2-26-02)

Analyst: C. Couch

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.