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## F I S C A L I M P A C T R E P O R T

SPONSOR: Martinez, K. DATE TYPED: 02/24/01 HB 770  
SHORT TITLE: Uniformed Athletic Agents Act SB \_\_\_\_\_  
ANALYST: Moran

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
No Fiscal Impact					

### SOURCES OF INFORMATION

LFC Files

Administrative Office of the Courts (AOC)

Corrections Department

State Department of Education (SDE)

National Conference of Commissioners on Uniform State Laws (NCCUSL)

### No Response

Commission on Higher Education (CHE)

Secretary of State

### SUMMARY

#### Synopsis of Bill

HB 770 contains no appropriation, yet creates an act which provides for the uniform registration, certification and background check of sports agents seeking to represent student athletes who are or may be eligible to participate in intercollegiate sports. The act also imposes specified contract terms on these agreements to the benefit of student athletes, and provides educational institution with the right to seek remedies for damages resulting from a breach of specified duties. The certification process would be administered by the Secretary of State's office.

#### Section Synopsis

##### Section 1 - Short title explication

Section 2 - "Athlete agents," as defined by this bill, are only individuals, not business entities or corporations. "Representatives of professional sports organizations" need not register so long as they are acting for their teams or organizations. "Contact" between agent and athlete does not include information-gathering communications, such as a question about an athlete's potential professional

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expectations. "Student athlete" is defined as college students participating in single or multiple sports, high school students, graduates or dropouts.

Section 3 - Designates the Secretary of State as the agent for service of process for nonresident agents. Also provides the Secretary of State subpoena powers as they would relate to executing this act.

Section 4 - Posits the certification requirement for individuals acting as athletic agents. Also, allows athletic agents to perform services without registration so long as a student athlete initiates contact, and within seven days of this initial contact, the athletic agent registers with the Secretary of State's office. Finally, any contract signed in violation of this section will void the contract and the athletic agent must return any consideration received.

Section 5 - Sets out the form requirements used within the registration and renewal process, acknowledges that submitted information becomes public information, and allows states who have adopted this uniformed act reciprocal use of applications and certifications in lieu of a submission.

Section 6 - Includes the determining factors by which the Secretary of State can issue certification, such as criminal, immoral or unethical actions. Also, the Secretary of State is authorized to consider actions taken against an athlete agent in another state regarding licensure.

Section 7 - Allows the Secretary of State, with administrative due process, the right to revoke, suspend or refuse to renew registration.

Section 8 - Allows the Secretary of State to issue temporary certification while applications are pending.

Section 9 - Determines registration and renewal fees (see Fiscal Implications below).

Section 10 - Outlines the contents of a valid agent-student athlete contract. In essence, this layout favors the student athlete such that it is modeled after contracts peculiar to consumer transactions. Most notably, subsection (c) requires that the contract state, within close proximity to the signature, the student athlete's potential loss of eligibility and the mandate to inform the academic institutions athletic director of this agreement within 72 hours. Also, the athlete may cancel the contract within 14 days of signing.

Section 11 - Protects an academic institution from being sanctioned or penalized by allowing an ineligible player to participate in intercollegiate sporting event. What's more, this section requires the athlete agent to inform in record the educational institution within 72 hours or before the next scheduled athletic event (whichever comes first).

Section 12 - Allows the student athlete to cancel any contract within 14 days, regardless of the athlete agents compliance with any section of this bill. The student athlete is relieved of the stipulations of the contract, yet is not assured that eligibility to participate is still available (see Technical Issues).

Section 13 - Requires athletic agents keep detailed records of any student athlete contract for five years.

Section 14 - Outlines the conduct an athletic agent would commit that could lead to criminal or civil penalties. Of note, subsection (a)(3) disallows an athlete agent to supply anything of value to persons who may have influence over the student athlete.

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Section 15 - Establishes that violations of Section 14 are misdemeanor offenses, punishable under section 31-19-1 NMSA 1978.

Section 16 - Provides an avenue by which an educational institution can claim damages for any conduct of an athlete agent or former student athlete, such as the suspension of participation or any other penalty imposed by a national association of athletics.

Section 17 - Allows the Secretary of State to assess a \$ 25,000 penalty against an athlete agent who violates this act.

Section 19 - Allows for signatures to be made electronically as per the Electronic Signature in Global and National Commerce Act (ESGNCA).

Section 20 - Proposes a severability clause.

Section 21 - Places this act effective July 1, 2001.

### **Significant Issues**

In an effort to standardize state law relating to student athletes and athletic agents, the NCCUSL has drafted this act at the request of the National College Athletics Association (NCAA). Currently, this act has been introduced to the respective legislatures in 13 states, including Arizona and Utah.

### **FISCAL IMPLICATIONS**

To be licensed as an athletic agent by the state, the Secretary of State will assess a \$ 20 dollars registration and re-registration fee for an application originating in the state and a \$ 10 dollars registration and re-registration fee for an application concomitant to certification in another state. It is assumed that these fees will cover the costs associated with granting and regulating this act.

The AOC suggests that it will cost \$ 400.00 dollars to update the state's statutes. Furthering this, the AOC contends that any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws or amendments to existing laws have the potential to increase caseloads and/or judge-time spent on cases in the courts, thus requiring additional resources to handle the increase.

The Corrections Department roughly estimates that there will be from approximately one to five convictions for the new misdemeanor offense each year with this act. The Department further anticipates that virtually all of the persons convicted of the new misdemeanor offense will be placed under the Department's probationary supervision for one year. The Department estimates that the cost per client in probation and parole for a standard supervision program is \$1,536 per year; in Intensive Supervision programs is \$3,922 per year; in Department-Operated Community Corrections programs is \$5,519 per year; and in Privately-Operated Community Corrections programs is \$10,724 per year. Depending on the type of punishment, the Department feels that they could spend upwards of \$ 50,000 per year on monitoring convicted athletic agents.

### **TECHNICAL ISSUES**

Though the primary catalyst for the drafting of this act, the NCAA, the nation's largest college private athletic regulatory agency, has guidelines against student athletes retaining an athletic agent, as well as receiving endorsements that derive from athletic ability. Nominally, any student athlete who would

engage in a contract with an athletic agent would automatically be ineligible to participate in that college sport, and the college with which the player is associated could be in danger of sanctioning by the NCAA. This loss of eligibility is also possible if the student athlete is engaged in an endorsement contract. In short, the general principle covering the NCAA's mandate is that once a student athlete receives or gives any form of compensation that is due in part from the athlete's ability for a service, the athlete is no longer an amateur, and thus no longer able to compete at the amateur level. It is difficult to empirically suggest that a student athlete, who signs the type of contract this act proposes, would be able to void the contract in 14 days and maintain eligibility. Such a decision would be made by the NCAA and the educational institution, more than likely on a case by case basis. Attorney's may be retained by student athletes under this act so long as they provide purely legal advice.

Educational institutions, which are located in a state that has passed this act (NCAA Division 1 schools in New Mexico are NMSU and UNM), would be greatly protected by this act. The act's stipulation requiring the athlete agent to provide the school notice within 72 hours or before the next sports activities, whichever comes first, allows the school to remove the athlete from their eligibility roster, thus the student athlete would be unable to compete and the school would not be in violation of NCAA rules. If a school, however, received this notice and did nothing, then the NCAA would have a case against the institution.

Finally, this act would introduce a streamlined registration process for the Secretary of State, who could work with other states who have passed this measure. It is this uniformed registration process that makes this act so appealing, for it creates a network by which states can monitor and regulate an industry which has been under-supervised for years. Yet, in order for this uniformity to happen, this act must be passed in other states.

RJM/ar