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FISCAL IMPACT REPORT

ORIGINAL DATE 2/2/09

SPONSOR A. Maestas LAST UPDATED 2/20/09 HB 330/aHJC

SHORT TITLE Uniform Athlete Agents Act SB _____

ANALYST C. Sanchez

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
\$0.1	\$60.0	\$60.0	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	\$0.1	\$50.0	\$50.0	\$100.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Regulation and Licensing Department (RLD)
 University of New Mexico (UNM)
 Department of Corrections (DOC)
 Commission of Higher Education (CHE)

Synopsis of HJC Amendment

The House Judiciary Committee amendment to HB 330 removes the definition of “Commission” and inserts the definition for “Secretary”. The amendment shifts most of the administrative responsibilities of the Uniform Athlete Agents Act from New Mexico Athletic Commission to the Secretary of State.

SUMMARY

Synopsis of Original Bill

The bill enacts the Uniform Athlete Agents Act. An athlete agent, with the intent to induce a student to enter into an agency contract, who gives any materially false or misleading information or makes a materially false promise or representation, or who furnishes anything of value to the student athlete before the athlete enters into the agency contract, or who furnishes anything of value to any other individual, is guilty of a misdemeanor.

FISCAL IMPLICATIONS

The New Mexico Athletic Commission estimates the HB 330 would generate an additional \$60,000 in revenue to the general fund in the first fiscal year. The cost of one FTE necessary to administer the provision of the bill is estimated at \$50,000. The bill does not contain an appropriation.

SIGNIFICANT ISSUES

HB 330 enacts the Uniform Athlete Agents Act (UAAA) to provide 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 was completed by the Uniform Law Commissioners in 2000, approved by the American Bar Association, supported by the National Collegiate Athletic Association and adopted by 38 states to date.

The Uniform Law Commissioners provide the following summary of the Act:

With the proliferation of professional sport franchises in the United States, and the immense sums now paid to athletes for commercial endorsement contracts, it is no surprise that the commercial marketplace in which athlete agents operate has become very competitive. And while maximizing the income of one's clients is certainly the "American way" (as well as good business practice), the recruitment of a student-athlete while he or she is still enrolled in an educational institution may cause substantial eligibility or other problems for both the student and the school, especially where the athlete is not aware of the implications of signing the agency agreement or where agency is established without notice to the athletic director of the school. The problem becomes even more acute where an unscrupulous agent misleads a student. While several states have enacted legislation to address these issues, agent registration and disclosure requirements vary greatly from state to state, causing confusion among student athletes, athletic departments, educational institutions, and the agents themselves.

The Uniform Athlete Agents Act 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, imposes specified contract terms on these agreements to the benefit of student athletes, and provides educational institutions with a right to notice along with a civil cause of action for damages resulting from a breach of specified duties.

The act requires agents to disclose their training, experience, and education, whether they or an associate have been convicted of a felony or crime of moral turpitude, have been administratively or judicially determined to have made false or deceptive representations, have had their agent's license denied, suspended, or revoked in any state, or have been the subject or cause of any sanction, suspension, or declaration of ineligibility. Agents are required to maintain executed contracts and other specified records for a period of five years, including information about represented individuals and recruitment expenditures, which would be open to inspection by the state.

While the act imposes significant disclosure, registration, and record-keeping requirements on athlete agents, those who are issued a valid certificate of registration or licensure in one state would be able to cross-file that application (or a renewal thereof) in all other states that have adopted the act. This aspect of the act at once simplifies regulatory compliance for agents, while at the same time facilitates the ability of all jurisdictions to obtain dependable, uniform information on an agent's professional conduct in other states.

Because the potential loss of intercollegiate eligibility is a serious, and often unexpected, effect of entering an athlete-agent contract, the act provides student-athletes with a statutory right to cancel an agency contract within 14 days after the contract is signed without penalty. In addition, athlete-agent contracts subject to the act are required to disclose the amount and method of calculating the agent's compensation, the name of any unregistered person receiving compensation because the athlete signed the agreement, a description of reimbursable expenses and services to be provided, as well as warnings disclosing the cancellation and notice requirements imposed under the act.

The potential loss of a student-athlete's eligibility is also a serious concern for athletic programs at educational institutions - accordingly, the act requires both the agent and the student-athlete to give notice of the contract to the athletic director of the affected educational institution within 72 hours of signing the agreement, or before the athlete's next scheduled athletic event, whichever occurs first. Where applicable, the agent must also provide this notice to a school where he or she has reasonable grounds to believe the athlete intends to enroll. The act would also provide educational institutions with a statutory right of action against an athlete agent or former student athlete (several, but not joint, liability) for damages, including losses and expenses incurred as a result of the educational institution being penalized, disqualified, or suspended from participation by an athletics association or conference, or as a result of reasonable self-imposed disciplinary actions taken to mitigate sanctions, as well as associated party costs and reasonable attorney's fees.

Finally, the act prohibits athlete agents from providing materially false or misleading information or making a materially false promise or representation with the intent of inducing a student athlete to enter into an agency contract, or from furnishing anything of value to a student athlete or another person before that athlete enters into an agency contract. The act provides that an athlete agent may not intentionally initiate contact with a student athlete unless registered under this act, and may not refuse or willfully fail to retain or permit inspection of required records, fail

to register where required, provide materially false or misleading information in an application for registration or renewal thereof, predate or postdate an agency contract, or fail to notify a student athlete (prior to signing) that signing an agency contract may make the student athlete ineligible to participate as a student athlete in that sport. The act would impose criminal penalties for violations of these prohibitions.

The Uniform Athlete Agents Act provides important protections for student-athletes and the educational institutions where they compete, creates a uniform body of agent registration information for use by state agencies, and simplifies the regulatory environment faced by legitimate sports agents.

The New Mexico Athletic Commission would administer the registration of athlete agents, issue certificates, develop the prescribed athlete agent application form, review applications, and validate interstate licenses submitted in lieu of the prescribed athlete agent's application form. The New Mexico Athletic Commission estimates that one FTE would be needed for the Secretary of State to administer the program.

TECHNICAL ISSUES

The definition of “student athlete” found in Section 2, paragraph M would leave the door open for agents to contact children in elementary, middle school and high school. An age requirement or grade level requirement before contact from an agent should be included.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

CS/mc:mt