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FISCAL IMPACT REPORT

SPONSOR: Martinez DATE TYPED: 2/18/03 HB 401

SHORT TITLE: Uniform Athlete Agents Act SB

ANALYST: Maloy

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			\$170.0 See Narrative	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY03	FY04			
	See Narrative		Recurring	General Fund

SOURCES OF INFORMATION

Responses Received From
Secretary of State's Office

SUMMARY

Synopsis of Bill

House Bill 401 requires that any person seeking to act as an agent on behalf of a student athlete must register as such an agent with the Secretary of State's Office. The bill sets forth the program requirements, including registration requirements, fees, required student – agent contract content, students' rights, and criminal and civil penalties.

Violation of the act constitutes a misdemeanor, and gives rise to civil damages against the agent and/or the student in the event an educational institute is harmed.

Significant Issues

1. HB 401 will aid in preventing exploitation of young, talented athletes.
2. The requirements for registration as an agent are relatively lax. However, the bill provides that “the secretary of state may refuse to issue a certificate of registration if the secretary of state determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant’s fitness to act as an athlete agent.” The bill states that in making this determination, the secretary of state may consider such matters as:
 - a. conviction of a crime involving moral turpitude or a felony,
 - b. having made materially false, misleading, deceptive or fraudulent representations in applying for registration or as an agent,
 - c. having engaged in conduct that would disqualify the individual from serving in a fiduciary capacity,
 - d. revocation of agent registration in another state,
 - e. having engaged in conduct that resulted in a sanction against participation in an interscholastic or intercollegiate athletic event, and
 - f. having engaged in conduct adversely reflecting on the applicant’s credibility, honesty or integrity.

While the intent of this section is to provide criteria by which the secretary of state may determine if someone is unfit to represent the interests of a student athlete, many of the criteria are of such a nature that they will likely give rise to significant legal challenges.

3. Section 10 of the bill sets forth detailed required contract content. This is important to protecting the interests of young persons who are not sophisticated in business dealings. Some of the required content is as follows:
 - a. the amount and method of calculating the consideration to be paid by the student athlete for services,
 - b. a listing of any persons who will be compensated because of the student – agent contract,
 - c. a description of any expenses the student is agreeing to reimburse,
 - d. a description of the agent services to be provided,
 - e. the date of execution and the duration of the contract, and
 - f. within close proximity to the signature of the student athlete, a conspicuous notice in boldface type and capital letters stating:

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 SEVENTY-TWO HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND
- (3) YOU MAY CANCEL THIS CONTRACT WITHIN FOURTEEN DAYS AFTER SIGNING IT. CONCESSION OF THIS CONTRACT MAY NOT REINSTATE YOU ELIGIBILITY.

FISCAL IMPLICATIONS

It is not believed that the revenue to be generated through this program's fees will be significant. It is doubtful there will be many registrants. Also, the fee schedule is low:

\$20.00 for initial application for registration
\$10.00 for an application for registration based on licensure in another state
\$20.00 for application for renewal
\$10.00 for application for renewal based on licensure in another state

This revenue will go to the general fund and will be recurring.

The Secretary of State's Office already registers numerous types of legal relationships. Seemingly, addition of this registration would not be significant.

However, the Secretary of State's Office estimates implementation of this program will require an appropriation of \$170.0. The office states that two additional FTE are needed, an attorney and a legal secretary are needed. The office expresses concern regarding the need to conduct background investigations, subpoenas, hearings, and possible revocations.

With regard to the "legal concerns" expressed by the office, most such matters are not handled by the agencies themselves. Rather, the Secretary of State's Office is represented by designated counsel through the Attorney General's Office.

TECHNICAL ISSUES:

The Secretary of State's Office has offered the following technical concerns:

- 1) Section 3 provides that the Secretary of State is appointed as the agent for service of process for nonresident athlete agents. A conflict of interest may arise in a situation where the Secretary of State is recognized as the agent for service of process for an athlete agent and must also subpoena records from the athlete agent and possibly hold a hearing, assess a penalty or revoke the athlete agent's registration.
- 2) Sections 5 and 6 provide for a registration process and a certificate of registration from the Secretary of State. The bill does not stipulate the duration that a registration is effective (i.e., one year, two years).
- 3) Section 6(D) provides for an athlete agent to apply to renew his registration. The bill does not stipulate the length of time that an athlete agent's renewal is effective (i.e., one year, two years). Further, the bill does not require an athlete agent to apply for renewal of his registration during a certain period (i.e., thirty days or sixty days prior to the expiration of registration).
- 4) Section 8 provides for a temporary certificate of registration. The bill does not prescribe the length of time for a temporary registration (i.e., sixty days, ninety days, etc.).

In response to the concerns expressed by the Secretary of State's Office, the following suggestion is provided:

Addition of a grant of rule making authority through which the Secretary of State's Office may administratively address some of the concerns outlined immediately above. Many of the office's concerns should not be included in a statute, as the office itself is better able to determine registration terms, etc. that are consistent with the office's operational needs.

ALTERNATIVES

This program *may* better fit with the Athletic Commission (Regulation & Licensing Department). However, in considering such an option, it is noted that the Commission keeps the revenue it generates. Fees paid to the Commission are OSF and do not come to the general fund.

SJM/prr