

OVERVIEW

Sunrise Analysis: Athlete Agents

Report No. 06-09, December 2006

Summary

An athlete agent, also known as a sports agent, is someone who facilitates playing and endorsement contracts for professional athletes in return for commissions. Athlete agents enter into agency contracts with student-athletes to negotiate or solicit professional sports or endorsement contracts on the student-athletes' behalf. For several years now, the National Conference of Commissioners on Uniform State Laws has attempted to have all states regulate athlete agents.

In House Concurrent Resolution No. 112, Senate Draft 1, of the 2006 Regular Session, the Legislature requested the Auditor to analyze a proposal to regulate athlete agents in Hawai'i. That proposal is contained in House Bill No. 2440 of the 2006 Regular Session.

The Hawai'i Regulatory Licensing Reform Act, Chapter 26H, Hawai'i Revised Statutes, requires that bills proposing the regulation of previously unregulated professions or vocations be referred to the Auditor for analysis prior to enactment. This "sunrise" provision requires the Auditor to assess whether the proposed regulation is necessary to protect the health, safety, or welfare of consumers and whether the regulation is consistent with other regulatory policies in Chapter 26H. In addition, the Auditor must examine probable effects of the proposal and assess alternative forms of regulation.

Athlete agents are regulated in 35 states. The nature of the regulation—whether it be registration, certification, or licensure, terms of initial and renewal regulation, costs for initial and subsequent applications—vary widely among those 35 states. Numbers of active, regulated athlete agents also vary widely, from zero to approximately 230. In one state, the exact number of athlete agents is unknown because registration can include corporations, and there can be up to 12 agents in a registered corporation. Also, agents are regulated by such national players' associations as the National Football League Players Association, National Basketball Association Players Association, and the Major League Baseball Players Association.

House Bill No. 2440, House Draft 2, Senate Draft 2, proposes to regulate athlete agents in Hawai'i by requiring they register with the Department of Commerce and Consumer Affairs. To register with the State, the applicant must disclose such information as relevant formal training, practical experience, criminal convictions, sanctions or disciplinary actions. The bill also requires that any contract made between an athlete agent and a student-athlete contain a conspicuous notice next to the student-athlete's signature regarding the effect of the contract on the latter's eligibility. In addition, both the agents and the student-athletes must notify the educational institutions of the existence of the contracts. Penalties and recourse are provided by the bill.

The State's policy regarding regulation of professions and occupations weighs heavily on the side of protecting consumers. That is, the sunrise law requires, among others, that the State should regulate professions only where reasonably necessary to protect consumers; that proposals for new regulation demonstrate that the purpose is



the health, safety, or welfare of consumers and not the profession; and that evidence of abuses by practitioners be considered prominently in determining whether a reasonable need for regulation exists. Essentially, then, the burden of proof is on the proponents of a measure to demonstrate the need for regulation and that the regulatory proposal meets the sunrise criteria.

We conclude that the regulation of athlete agents in Hawai'i is unnecessary. There is no evidence of abuses by the three agents in Hawai'i and agents do not pose a significant risk to the health, safety, or welfare of the state's student-athletes. The pool of potential professional athletes is considered small.

Furthermore, a variety of existing alternatives to state regulation provide sufficient protection to both student-athletes and educational institutions. A federal law, Public Law 108-304, the Sports Agent Responsibility and Trust Act, spells out conduct by athlete agents that would be deemed unfair or deceptive acts by the Federal Trade Commission. There are other federal and state laws capable of providing grounds for relief for those who suffer damage by athlete agents. National players' associations certify agents, making state intervention redundant.

Although most other states regulate athlete agents, the real reason for the proposed legislation is national uniformity rather than an actual need to protect consumers. Yet when the individual states' provisions are examined, we find little consistency. For example, regulatory fees range from \$0 to \$2,500. Even if Hawai'i's fees were to be set within this range, given the salaries earned by most professional athletes, a fee at the high end would not deter athlete agents from operating in Hawai'i. The Department of Commerce and Consumer Affairs estimates that the fee to be set to reimburse it to register each of the three athlete agents operating in Hawai'i would be less than \$250 initially and less than \$150 to renew biennially. Most states require renewals every two years, but there are some states with only one-time, indefinite registrations.

Finally, the proposed measure is problematic. The bill contains several ambiguities that would make its implementation difficult for administrators. Determining who would be qualified would be difficult, because the bill makes no provision for verifying the information presented by an applicant. The bill also contains outdated language that should be removed if the legislation is to be enacted.

Recommendations and Response

We recommended that H.B. No. 2440 not be enacted. However, should it be enacted, it should be amended to remove the requirement to disclose crimes of "moral turpitude," be clarified that there is no obligation on the State to verify the details contained in the applications, and that regulation be the least restrictive type, registration, akin to business registration.

The Department of Commerce and Consumer Affairs declined to respond to a draft of our report.

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