Sunrise Analysis: Athlete Agents

A Report to the Governor and the Legislature of the State of Hawai‘i

Report No. 06-09
December 2006

THE AUDITOR
STATE OF HAWAI‘I

Office of the Auditor

The missions of the Office of the Auditor are assigned by the Hawai‘i State Constitution (Article VII, Section 10). The primary mission is to conduct post audits of the transactions, accounts, programs, and performance of public agencies. A supplemental mission is to conduct such other investigations and prepare such additional reports as may be directed by the Legislature.

Under its assigned missions, the office conducts the following types of examinations:

1. *Financial audits* attest to the fairness of the financial statements of agencies. They examine the adequacy of the financial records and accounting and internal controls, and they determine the legality and propriety of expenditures.

2. *Management audits*, which are also referred to as *performance audits*, examine the effectiveness of programs or the efficiency of agencies or both. These audits are also called *program audits*, when they focus on whether programs are attaining the objectives and results expected of them, and *operations audits*, when they examine how well agencies are organized and managed and how efficiently they acquire and utilize resources.

3. *Sunset evaluations* evaluate new professional and occupational licensing programs to determine whether the programs should be terminated, continued, or modified. These evaluations are conducted in accordance with criteria established by statute.

4. *Sunrise analyses* are similar to sunset evaluations, but they apply to proposed rather than existing regulatory programs. Before a new professional and occupational licensing program can be enacted, the statutes require that the measure be analyzed by the Office of the Auditor as to its probable effects.

5. *Health insurance analyses* examine bills that propose to mandate certain health insurance benefits. Such bills cannot be enacted unless they are referred to the Office of the Auditor for an assessment of the social and financial impact of the proposed measure.

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9. *Special studies* respond to requests from both houses of the Legislature. The studies usually address specific problems for which the Legislature is seeking solutions.

Hawai‘i’s laws provide the Auditor with broad powers to examine all books, records, files, papers, and documents and all financial affairs of every agency. The Auditor also has the authority to summon persons to produce records and to question persons under oath. However, the Office of the Auditor exercises no control function, and its authority is limited to reviewing, evaluating, and reporting on its findings and recommendations to the Legislature and the Governor.

THE AUDITOR
STATE OF HAWAI‘I
Kekuanao‘a Building
465 S. King Street, Room 500
Honolulu, Hawai‘i 96813

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.

Marion M. Higa
State Auditor
State of Hawai‘i

Office of the Auditor
465 South King Street, Room 500
Honolulu, Hawai‘i 96813
(808) 587-0800
FAX (808) 587-0830

Sunrise Analysis: Athlete Agents

A Report to the Governor and the Legislature of the State of Hawai‘i

Conducted by

The Auditor
State of Hawai‘i
and
Rachel N. Hibbard,
Consultant

Submitted by

THE AUDITOR
STATE OF HAWAI‘I

Report No. 06-09
December 2006

Foreword

This "sunrise" report on athlete agents was prepared in response to a provision in the Hawai'i Regulatory Licensing Reform Act, Chapter 26H, Hawai'i Revised Statutes, that requires the Auditor to evaluate proposals to regulate previously unregulated professions or occupations.

In House Concurrent Resolution No. 112, Senate Draft 1, of the 2006 Regular Session, the Legislature requested an analysis of a proposal to regulate athlete agents as provided by House Bill No. 2440 of the 2006 session. This analysis, prepared by consultant Ms. Rachel Hibbard, presents our findings and recommendations on whether the proposed regulation complies with policies in the licensing reform law and whether a reasonable need exists to regulate athlete agents to protect the health, safety, or welfare of the public.

We wish to express our appreciation to the Department of Commerce and Consumer Affairs and other organizations and individuals that we contacted during the course of the analysis.

Marion M. Higa
State Auditor

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Chapter 1
Introduction

This report is in response to a "sunrise" provision of the Hawai'i Regulatory Licensing Reform Act, Chapter 26H, Hawai'i Revised Statutes (HRS). The provision requires that bills proposing the regulation of previously unregulated professions or vocations be referred to the Auditor for analysis prior to enactment. The Auditor must 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, HRS. In addition, the Auditor must examine probable effects of the proposed regulation and assess alternative forms of regulation.

House Bill No. 2440 of the 2006 legislative session proposed to enact the Uniform Athlete Agents Act (UAAA) developed by the National Conference of Commissioners on Uniform State Laws (NCCUSL). The purpose of the uniform law is to protect student-athletes and educational institutions by regulating the way sports agents deal with students on an initial agency agreement. The act would require the following: that agents register with the state and disclose business information and history; that any contract include specific warnings about potential loss of eligibility; and that both the agent and student-athlete notify the affected school if an agreement is signed. House Concurrent Resolution No. 112, Senate Draft 1, of the 2006 Regular Session requests the sunrise analysis of this athlete agent bill.

Background on Athlete Agents

An athlete agent, also known as a sports agent, is someone who facilitates playing and endorsement contracts for professional athletes in return for commissions. The classic example of such an individual was portrayed by Tom Cruise in the 1996 movie, "Jerry Maguire."

Definitions of relevant terms

As defined in the Uniform Athlete Agents Act, an *athlete agent* is 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. "Athlete agent" does not include a spouse, parent, sibling, grandparent, or guardian of a student-athlete, any legal counsel for purposes other than that of representative agency, or an individual acting solely on behalf of a professional sports team or professional sports organization.

The UAAA defines a *student-athlete* as an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, an intercollegiate sport. An *agency contract* is defined as an oral or written agreement in which a student-athlete authorizes a person to negotiate or solicit a professional sports contract or endorsement contract on his or her behalf.

Management of athlete agents

Currently, athlete agents are not regulated in Hawai'i but they are regulated in 35 other states. Exhibit 1.1 shows where and to what degree (registration, certification, or licensure) agents are regulated. It also lists how many agents are regulated in each of these states.

Exhibit 1.1
Regulation of Athlete Agents Nationally

State	Type of regulation	Number of regulated athlete agents	Fees
1. Alabama	Registration valid – for 2 years	101	• $200 initial application fee • $100 initial application fee based on registration or license from another state • $100 renewal license fee based on registration/license from Alabama or another state
2. Arizona	Registration – valid for 2 years	95	• $20 filing fee
3. Arkansas	Registration – valid for 2 years	19	• $500 registration/renewal fee • $100 registration/renewal fee based on registration from other states
4. California	Disclosure statement considered a "filing"-valid indefinitely	190 active 9 inactive	• $30 to file Disclosure Statement • $20 to file Amendment to Disclosure Statement
5. Connecticut	License – valid for 2 years	8	• $200 application fee
6. Delaware	Waiting for governor to appoint a board	0	• $2,500 application fee
7. District of Columbia	Registration – valid for 2 years	3	• $515 application/renewal fee

Exhibit 1.1
Regulation of Athlete Agents Nationally (continued)

State	Type of regulation	Number of regulated athlete agents	Fees
8. Florida	License – mandatory renewal on May 31st every even-numbered year	231	• $1,302 initial application (application fee - $500; licensure fee - $750; unlicensed activity fee - $5; criminal history records check - $47) • $445 renewal fee
9. Georgia	Registration – valid for 2 years	77 active 196 inactive	• $200 initial registration/renewal • $500 reinstatement of registration (when registration lapses) • $10,000 bond
10. Idaho	One-time registration	3 (8 applications pending)	• $250 original application and registration fee
11. Indiana	*	*	*
12. Iowa	Registration – valid for 1 year	0	• $300 registration/renewal fee • $25,000 bond
13. Kansas	Registration – valid for 2 years	25	• $515 registration/renewal fee
14. Kentucky	Registration – valid for 1 year	24	• $300 application fee • $100 renewal fee • $100,000 bond
15. Louisiana	Registration – valid for 1 year	50	• $100 registration/renewal fee
16. Maryland	License – valid for 2 years	29	• $25 application fee • $1,000 individual license • $1,000 individual renewal • $1,000 corporate license • $1,000 corporate renewal
17. Michigan	*	*	*
18. Minnesota	Registration – valid for 2 years	*	• $500 registration fee • $400 renewal fee
19. Mississippi	Registration – valid for 2 years	~ 50	• $100 initial registration • $50 renewal
20. Missouri	Licensure – valid for 2 years	29	• $538 (including $500 license; $38 background check for 2 fingerprint cards)
21. Montana	Registration (no board) – valid for 2 years	4	• $200 application/renewal fee
22. Nevada	Registration – valid for 2 years	20	• $500 application/renewal fee
23. New York	Registration – valid for 2 years	0	• $100 registration fee • $50 renewal fee
24. North Carolina	Registration – valid for 1 year	66	• $200 per application

Exhibit 1.1
Regulation of Athlete Agents Nationally (continued)

State	Type of regulation	Number of regulated athlete agents	Fees
25. North Dakota	*	*	*
26. Ohio	License – valid for 2 years	70	• $500 license fee
27. Oklahoma	Registration – valid for 1 year	1 current 24 total	• $1,000 filing fee
28. Oregon	Registration - valid for 2 years	~ 20	• $250 initial application fee • $150 renewal application fee • $150 renewal based on registration from qualifying state
29. Pennsylvania	Registration – valid for 2 years	165	• $200 individual registration • $400 corporate registration • $100 processing fee • $25 bond filing fee ($20,000 bond)
30. South Carolina	Registration – valid for 2 years	~ 50	• $500 application fee • $300 renewal fee
31. South Dakota	One-time registration	0	• No fees
32. Tennessee	Registration – valid for 2 years	~ 80	• $500 application fee • $200 renewal fee • $400 annual Professional Privilege Tax
33. Texas	Registration – valid for 1 year	67 entities (individuals or corporations, can be up to 10-12 agents in a corporation)	• $1,000 registration/annual renewal fee per sole proprietor • $100 per agent in a company
34. Utah	Registration – valid for 2 years	6	• $510 initial/biennial processing fee
35. Washington	n/a	0	• None – UAAA is in place, but is self-administering; violations can be pursued by Attorney General
36. West Virginia	Registration – valid for 2 years	58	• $50 original application • $10 renewal application
37. Wisconsin	*	16	• $312 initial credential fee • $312 reciprocal fee

**Information not available as of July 2006*

Sources: The websites of the states cited the NCAA website and telephone interviews with state license and regulatory officials.

In addition, agents are regulated by national players' associations such as the National Football League Players Association (NFLPA), National Basketball Association Players Association (NBAPA), and the Major League Baseball Players Association (MLBPA). They are not, however, regulated or tracked by the National Collegiate Athletics Association (NCAA).

Current Proposal To Regulate Athlete Agents

House Bill No. 2440, House Draft 2, Senate Draft 2 of the 2006 Regular Session proposes to regulate athlete agents in Hawai'i by enacting the Uniform Athlete Agents Act, which requires that they register with the state Department of Commerce and Consumer Affairs (DCCA).

Specifically, the bill would prohibit any individual from acting as an athlete agent in Hawai'i who does not hold a certificate of registration obtained from the State. To register with the State, an applicant must disclose, among other things, and under penalty of perjury:

- The applicant's formal training, practical experience, and educational background relating to activities as an athlete agent;
- Whether the applicant has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony;
- Whether there has been any administrative or judicial determination that the applicant has made a false, misleading, deceptive, or fraudulent representation;
- Any instance in which the applicant's conduct has 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 arising out of occupational or professional conduct; and
- Whether the applicant has had any application for registration or licensure as an athlete agent in any state denied, suspended, revoked, or refused for renewal.

The bill also requires that any contract made between an athlete agent and a student-athlete must contain a conspicuous notice next to the student-athlete's signature stating (in boldface type and capital letters):

"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; AND
(3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY."

Furthermore, the bill requires both agents and student-athletes to notify, within 72 hours after entering into an agency contract or before the student-athlete's next scheduled athletic event, the student-athlete's educational institution of the existence of the contract between the agent and student-athlete.

The bill also makes the violation of any provision of the act a misdemeanor, and provides educational institutions with the right to sue athlete agents for damages suffered as a result of any violation of the act.

Objectives of the Analysis

1. Determine whether there is a reasonable need to regulate athlete agents to protect the health, safety, or welfare of Hawai'i's public.
2. Assess the probable effects of regulation.
3. Assess the appropriateness of alternative forms of regulation.
4. Make recommendations as appropriate.

Criteria for the Analysis

To assess the need to regulate athlete agents as proposed in H.B. No. 2440, H.D. 2, S.D. 2, we applied the criteria set forth in Section 26H-2, HRS, of the *Hawai'i Regulatory Licensing Reform Act*. The Legislature established these policies to ensure that regulation of an occupation occurs only when needed to protect consumers. Since regulation is an exercise of the State's police power, it should neither be imposed lightly nor serve to benefit practitioners of the occupation, who often seek regulation for reasons that go beyond consumer protection. For example, some practitioners believe licensing will enhance their professional status and upgrade their occupation.

Policies and principles of regulation in Hawai'i

Hawai'i's "sunrise" law (Section 26H-6, HRS) requires the Auditor to assess new regulatory proposals within the frame of regulatory policies in the statute. These policies clearly articulate that the primary purpose of vocational or professional regulation is to protect consumers:

- The State should regulate professions and vocations only where it is reasonably necessary to protect consumers;
- Regulation should protect the health, safety, or welfare of consumers and not the profession;
- Evidence of abuses by practitioners of the profession should be given great weight in determining whether a reasonable need for regulation exists;
- Regulation should be avoided if it artificially increases the costs of goods and services to consumers, except where the cost is exceeded by the potential danger to consumers;
- Regulation should be eliminated when it has no further benefit to consumers;
- Regulation should not unreasonably restrict qualified persons from entering the profession; and
- Aggregate fees for regulation and licensure must not be less than the full costs of administering the program.

We were also guided by the publication *Questions a Legislator Should Ask*, published by the national Council on Licensure, Enforcement and Regulation (CLEAR). According to CLEAR, the primary guiding principle for legislators is whether the unregulated profession presents a clear and present danger to the public's health, safety, and welfare. If it does, regulation may be necessary; if not, regulation is unnecessary and wastes taxpayers' money.[1]

In addition to the regulatory policies in Chapter 26H, HRS, and the guidance from CLEAR noted above, we also considered:

- Whether the incidence or severity of harm based on documented evidence is sufficiently real or serious enough to warrant regulation;
- Whether existing alternatives provide sufficient protection to consumers (such as federal programs, other state laws, marketplace constraints, private action, or supervision); and

- Whether the majority of states regulate the occupation for the same reasons.

Burden of proof

In assessing the need for regulation and the specific regulatory proposal, we placed the burden of proof on proponents of the measure to demonstrate the need for regulation. We evaluated their arguments and data against the above criteria. We examined the regulatory proposal and assessed whether the proponents provided sufficient evidence for regulation. In accordance with sunrise criteria, even if regulation *may* have *some* benefits, we recommend regulation only if it is *demonstrably* necessary to protect the public.

Types of regulation

We also scrutinized the appropriateness of the proposed regulatory approach.

There are three common approaches to occupational regulation:

- *Licensing*, the most restrictive form of occupational regulation, confers the legal right to practice to those who meet certain qualifications. Penalties may be imposed on those who practice without a license. Licensing laws usually authorize a board that includes members of the profession to establish and implement rules and standards of practice.

- *Certification* restricts the use of certain titles (for example, "social worker") to persons who meet certain qualifications, but it does not bar others who offer such services without using the title. Certification is sometimes called *title protection*. (Note that government certification should be distinguished from professional certification, or credentialing, by private organizations. For example, social workers may gain professional certification from the National Association of Social Workers.)

- *Registration* is used when the threat to the public's health, safety, or welfare is relatively small or when it is necessary to determine the impact of the operation of an occupation on the public. A registration law simply involves having practitioners enroll with the State so that a roster or registry is created and the State can keep track of practitioners. Registration can be mandatory or voluntary.

As part of our analysis, we assessed the appropriateness of the selected regulatory approach put forth in the proposed legislation.

Other considerations

Finally, in addition to assessing the need for regulation and the specific legislative proposal, we considered the appropriateness of other regulatory alternatives. We also assessed the cost impact on the proposed regulatory agency and the regulated group.

Scope and Methodology

To accomplish the objectives of our analysis, we researched literature on athlete agents generally, relevant state and federal laws and proposed legislation, and regulation by other states and private bodies. We contacted state legislators and representatives of the National Collegiate Athletics Council (NCAC); National Conference of Commissioners on Uniform State Laws (NCCUSL); National Football League Players Association (NFLPA); National Basketball Association Players Association (NBAPA); and Major League Baseball Players Association (MLBPA). We obtained input from representatives of other states that regulate athlete agents in addition to viewpoints from universities, private high schools, public high schools, and athlete agents in Hawai‘i. We also consulted the Hawai‘i DCCA, including its Professional and Vocational Licensing Division (PVL), its Regulated Industries Complaints Office (RICO), and its Office of Consumer Protection (OCP); the state Ombudsman; and the Better Business Bureau.

Our assessment was conducted from June 2006 to September 2006.

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Chapter 2

Regulation of Athlete Agents Is Not Necessary

This chapter presents our findings and recommendations on the proposal to regulate athlete agents as set forth in House Bill No. 2440 of the 2006 Regular Session. We conclude that the bill should not be enacted.

Summary of Findings

1. Regulation of athlete agents is unnecessary. There is no evidence of abuses by agents in Hawai‘i and agents do not pose a significant risk to the health, safety, or welfare of the state’s student-athletes. Furthermore, a variety of existing alternatives to state regulation provide sufficient protection to both student-athletes and educational institutions.

2. Arguments supporting regulation are not sufficient to warrant state intervention. Although most other states regulate athlete agents, the impact of regulating agents to both taxpayers and consumers would be minimal; the real reason for the proposed legislation is national uniformity rather than an actual need to protect consumers.

3. The proposed measure to regulate athlete agents is problematic. The bill contains several ambiguities that would make its implementation difficult for administrators as well as outdated language that should be removed if the legislation is enacted.

Proposed Regulation Is Unnecessary

Chapter 26H, HRS, states that professions and vocations should be regulated only when necessary to protect the health, safety, or welfare of consumers. The policies in Section 26H-2, HRS, ensure that occupational regulation takes place for the right reasons. In assessing the need for regulation, evidence of abuses and harm must be given great weight and the benefits and costs of regulation to consumers must be considered. Other considerations include whether alternatives provide sufficient protection to consumers, and whether the benefits of regulation outweigh the costs.

We found that athlete agents do not pose a serious risk of harm to student-athletes, nor has there been any evidence of abuses by athlete agents in Hawai‘i. Given the small numbers of student-athletes likely to attract professional agents and of athlete agents currently operating in Hawai‘i, existing alternatives already provide sufficient protection to both student-athletes and educational institutions in the state.

In addition, when determining the need for regulation in Hawai‘i, the burden of proof is on proponents of the measure to demonstrate the need for regulation. Even if regulation *may* have *some* benefits, we recommend regulation only if it is *demonstrably* necessary to protect the public. On balance, we found there is not a demonstrable need for the State to regulate athlete agents in its efforts to protect student-athletes in Hawai‘i.

No evidence of abuses in Hawai‘i

In researching the potential for harm caused by athlete agents, we reviewed literature on athlete agents and spoke with knowledgeable people from 35 other states as well as the NCAA and representatives from the three major players' associations.[1] Locally, we consulted the State's Regulated Industries Complaints Office (RICO), Professional and Vocational Licensing Division (PVL), and Office of Consumer Protection (OCP); the Hawaii Better Business Bureau; and athletic directors from five universities, three public high schools, and three private high schools around the state.

We were unable to identify any actual cases of alleged abuses committed by athlete agents in Hawai‘i. In the absence of any evidence of abuses to student-athletes or educational institutions in Hawai‘i to date, the incidence or severity of harm based on documented evidence is non-existent, and therefore not sufficiently real or serious to warrant regulation.

Moreover, it is common ground that there have been no such abuses in Hawai‘i. In fact, H.B. No. 2440, H.D. 2, S.D. 2 expressly states that "The legislature acknowledges that consumers in the State have not reported any harm or damage sustained from athlete agents."

The only evidence of abuses we were able to find came from the National Collegiate Athletics Association (NCAA), which reported only 32 such instances of abuse in over five years. These abuses, or agent violations, are summarized in Exhibit 2.1 below.

Exhibit 2.1
Types of Agent Violations[2]

Violations involving enrolled or prospective student-athletes who signed agreements with agents[3]	• Agreement signed with a coach who was acting as an agent on behalf of a student-athlete • Agreement signed with an agent because an injunction had been issued regarding the National Football League's draft policies • Student-athlete had been working with a permissible advisor (lawyer), who, unbeknownst to the student-athlete, acted outside the scope of the agreement and contacted professional teams on behalf of student-athlete • Agreement signed with an agent prior to exhausting the student-athlete's collegiate eligibility • Prospective student-athlete signed agreement with an attorney to act on his behalf in professional endeavors • Baseball advisor (lawyer) contacted professional team's director of scouting on behalf of prospective student-athlete to negotiate contract • SFX/IMG contracts with tennis student-athletes and prospective student-athletes, some of whom are under age 18; contracts provide for company to represent student-athlete or prospective student-athlete • Agent was hired to secure athletics scholarship • Student-athlete had knowledge that agent was contacting professional teams on his/her behalf which was determined to be an oral agreement
Violations involving the provision of benefits from an agent to an enrolled or prospective student-athlete	• Agent provided student-athlete with a line of credit • Agent provided credit card for hotel room and open gym for a prospective student-athlete • Representative of an agent (runner) provided cash to a student-athlete in a handshake in the hotel following a game • Agent provided benefits to student-athlete and his family (e.g., plane tickets, meals, rental car, use of cell phone) • Runner paid hotel room for student-athlete's roommate; student-athlete was not aware of benefit provided • Agent hosted dinner where clients and enrolled student-athlete attended • Runner provided transportation to enrolled student-athlete • Runner provided student-athlete with use of a car • Agent assisted with arranging and scheduling workouts with professional teams

Source: National Collegiate Athletic Association

Health, safety, and welfare are not at serious risk

Section 26H-2(1), HRS, provides that regulation of professions and vocations should be undertaken only where it is reasonably necessary to protect the health, safety, or welfare of consumers of the services. Furthermore, in its publication *Questions a Legislator Should Ask*,[4] the Council on Licensure, Enforcement and Regulation says that the primary guiding principle for legislators should be whether or not the unregulated profession presents a clear and present danger to the public's health, safety, and welfare. If the answer is no, regulation is unnecessary and wastes taxpayers' money.

No clear and present danger

We found no indication of any clear or present danger to the health, safety, or welfare of student-athletes in Hawai'i due to unregulated athlete agents.

Even the bill's primary proponents, the Commission on Uniform State Laws, admitted that regulation was intended as a preventative effort and as part of a national scheme.

Although there have been a number of disaster stories involving unsophisticated young athletes and unscrupulous agents, none have taken place in Hawai'i. Hawai'i is not inherently immune to the possibility of such instances occurring; however, the rate of occurrence is clearly linked to the number of student-athletes attracting the services of athlete agents.

Hawai'i simply does not have a very large pool of potentially professional student-athletes: there are only five tertiary academic institutions in Hawai'i that are members of the NCAA,[5] and only one of these is a Division I school[6]—the University of Hawai'i at Mānoa—and therefore likely to attract athlete agents seeking to engage with student-athletes.

Exhibit 2.2 shows the number of Division I athletes who participated at NCAA member institutions in Hawai'i as of 2003-04.

Exhibit 2.2
Number of Division I Participants at NCAA Member Institutions in Hawai'i, 2003-04

School	Sport	Number of Participants
University of Hawai'i, Mānoa	Baseball	34
University of Hawai'i, Mānoa	Men's Basketball	13
University of Hawai'i, Mānoa	Football	124
University of Hawai'i, Mānoa	Men's Golf	12
University of Hawai'i, Mānoa	Men's Swimming	27
University of Hawai'i, Mānoa	Men's Tennis	9
University of Hawai'i, Mānoa	Men's Volleyball	20
University of Hawai'i, Mānoa	Women's Basketball	15
University of Hawai'i, Mānoa	Women's Cross Country	19
University of Hawai'i, Mānoa	Women's Golf	9
University of Hawai'i, Mānoa	Softball	23
University of Hawai'i, Mānoa	Women's Soccer	26
University of Hawai'i, Mānoa	Women's Swimming	28
University of Hawai'i, Mānoa	Women's Tennis	10
University of Hawai'i, Mānoa	Women's Indoor Track	46
University of Hawai'i, Mānoa	Women's Outdoor Track	46
University of Hawai'i, Mānoa	Women's Volleyball	22
University of Hawai'i, Mānoa	Women's Water Polo	22
University of Hawai'i, Mānoa	Co-ed Sailing	29
		534 Sub-Total
University of Hawai'i, Hilo	Baseball	32
		566 Grand Total

Source: UH NCAA Participation Rates Report 2003-04

More recent figures are even smaller. Exhibit 2.3 shows the latest estimates of the number of Division I athletes and those who may potentially be approached by athlete agents at UH-Mānoa.

Exhibit 2.3
Number of Division I Participants at UH-Mānoa, 2006

Sport	No. of Participating Athletes	Estimated No. of Potentially Professional Athletes
Baseball	37	About 10 seniors are of professional caliber.
Football	124	10-15 seniors will be actively pursued by athlete agents this year.
Men's Basketball	16	2-3 seniors are worthy of professional consideration.
Men's Volleyball	23	3-4 seniors might be pursued by athlete agents.
Women's Basketball	17	1-2 seniors might be considered by athlete agents.
Women's Volleyball	18	4-5 seniors are of professional caliber.
Track	33	1-2 seniors could pursue further careers.
Total	268	31-41

Source: UH-Mānoa Athletic Department, August 2006

Of the 268 athletes identified in Exhibit 2.3 above, UH athletics staff estimate that between 31-41 of these students (12-15 percent) are of a sufficient caliber that they may or will be pursued by athlete agents.

It has been argued that high school athletes could also benefit from the proposed legislation, which specifies only "educational institution" (not "university"). However, there are similarly not many high schools in Hawai'i that regularly produce athletes of the quality likely to attract athlete agents.

Welfare is the only issue at stake

The protection of health and safety are clearly not issues in the proposal to regulate athlete agents. The only relevant category of harm is welfare—specifically, the economic welfare of student-athletes and of tertiary academic institutions. However, it is arguably not the State's responsibility to provide economic protection to either student-athletes or educational institutions under such circumstances, as discussed below.

Risks to student-athletes

The proposed regulation is ostensibly intended to primarily protect unsophisticated young athletes, who may be minors (under age 18), from signing a contract which could result in their loss of eligibility to play as

an amateur or their scholarship. Loss of scholarship may in turn result in a student leaving school for financial reasons and failing to earn a degree.

Although these are valid risks, the need for state involvement should be carefully considered against the costs of regulation and the incidence of such risk. As noted above, the potential incidence of harm, due to the low number of potentially professional athletes in Hawai‘i, is relatively small.

Furthermore, United States law generally favors a "buyer beware" approach to contracting. It is arguable that either a student-athlete's parents (if the athlete is under 18) or the educational institution should be providing the type of guidance needed to steer an athlete away from entering a detrimental contract.

Risks to educational institutions

Moreover, educational institutions, not student-athletes, are at the greatest risk of suffering financial loss due to an agent-athlete contract. Universities that are members of the NCAA are subject to its eligibility bylaws and may be penalized if a student-athlete violates his or her eligibility by signing a professional contract.

Damages to institutions can include loss of a student-athlete's eligibility to participate in a sport; substantial financial penalties to the team and the school; and sanctions against the school including repayment of money, loss of scholarships, loss of or reduction in television revenue, ineligibility for post-season play, and game forfeitures.

For example, in 2003 the University of Michigan was penalized for money and loans that one of its star basketball players received over a five-year period, even though the school was unaware of the payments. As a result of the player's transgressions, the university was placed on two years' probation, making it ineligible for post-season play; was forced to forfeit 112 games; lost one scholarship per year for four years; and was required to return $450,000 in NCAA tournament revenues. The NCAA also erased the player's name from all record books and subjected the university to a great deal of embarrassment, making the program an unattractive school for recruits.[7]

However, it is questionable whether it is the State's responsibility to protect such institutions. Furthermore, it is unlikely a university will be seen by a court as a helpless or unwary consumer—generally, universities are staffed with a bevy of legal counsel and a financial endowment that would preclude them from being considered "helpless" in the eyes of the court.

Existing alternatives provide sufficient protection

We found that, in addition to the relatively small number of student-athletes in Hawai'i who may be at risk from unscrupulous athlete agents, there are other measures already in place to protect consumers which negate the need for additional state regulation. For instance, there is a federal act specifically regarding athlete agents and there are other federal and state laws capable of providing grounds for relief for those who suffer damage by athlete agents. Furthermore, national players' associations also certify agents, making the need for state intervention redundant.

Federal law specifically addresses athlete agents

Public Law 108-304, the *Sports Agent Responsibility and Trust Act* ("SPARTA"), was enacted by Congress in 2004. Its aim is to designate certain conduct by sports (or athlete) agents as unfair or deceptive acts or practices per regulatory mandates of the Federal Trade Commission (FTC), thereby deterring sports agents from engaging in certain activities and preventing universities and athletes from unknowingly violating NCAA regulations.

Specifically relating to the signing of contracts with student-athletes, the act makes particular activities by agents illegal. It makes it unlawful for an athlete agent to induce a student-athlete to enter a contract by giving false or misleading information, making false promises or representations, or providing the student-athlete (or anyone associated with him or her) with anything of value, including loans or offering to act as guarantor for a debt. It also prohibits athlete agents from entering into any contract with a student-athlete without first providing the student with a disclosure document containing specified information; and it disallows pre- or post-dating any contracts with student-athletes. Exhibit 2.4 below shows the mandated disclosure requirements under Section 3 of the act.

Exhibit 2.4
Disclosure Requirements Under the Federal SPARTA

Section 3(b) Required Disclosure by Athlete Agents to Student Athletes.—

(1) In general.—In conjunction with the entering into of an agency contract, an athlete agent shall provide to the student athlete, or, if the student athlete is under the age of 18, to such student athlete's parent or legal guardian, a disclosure document that meets the requirements of this subsection. Such disclosure document is separate from and in addition to any disclosure which may be required under State law.

(2) Signature of student athlete.—The disclosure document must be signed by the student athlete, or, if the student athlete is under the age of 18, by such student athlete's parent or legal guardian, prior to entering into the agency contract.

(3) Required language.—The disclosure document must contain, in close proximity to the signature of the student athlete, or, if the student athlete is under the age of 18, the signature of such student athlete's parent or legal guardian, a conspicuous notice in boldface type stating:

"Warning to Student Athlete: If you agree orally or in writing to be represented by an agent now or in the future you may lose your eligibility to compete as a student athlete in your sport. Within 72 hours after entering into this contract or before the next athletic event in which you are eligible to participate, whichever occurs first, both you and the agent by whom you are agreeing to be represented must notify the athletic director of the educational institution at which you are enrolled, or other individual responsible for athletic programs at such educational institution, that you have entered into an agency contract."

Source: Public Law 108-304

Finally, the Act gives tertiary institutions and state attorneys general a right to sue in federal court for damages caused by agents who violate the law.

Other federal deterrents exist

In addition to SPARTA, other federal laws already exist that should deter unscrupulous athlete agents. For instance, athlete agents have been prosecuted and convicted for mail fraud and Racketeer Influenced and Corrupt Organizations (RICO) Act violations. The Securities and Exchange Commission (SEC) has also investigated athlete agents for illegally serving as financial advisors to their clients. The prospect of jail time or SEC inquiries should be a significant deterrent to unprincipled behaviors by athlete agents.

General laws also provide protection

Student-athletes, educational institutions, and the state attorney general may also be able to sue under existing laws.

For instance, other state courts have already deemed that financial benefits bestowed on students in exchange for their agreement to play at a given university amount to a contractual relationship with that university and either party may sue for breach of that contract. Thus, a university could potentially sue a student for breach of contract, including violation of NCAA eligibility requirements. A university could also sue a student-athlete for reasonably foreseeable consequential damages, such as penalties assessed on the university by the NCAA. Although parties generally may not sue for punitive (penalizing) damages, an exception is often made in cases of fraudulent or outrageous conduct such as the violation of NCAA rules. It is therefore likely that a university that offers a student financial aid or scholarship in exchange for an agreement to compete in a particular sport may sue such a student-athlete who breaches the contract for anything from compensatory to consequential or punitive damages (monetary compensation).

Furthermore, a university may also sue an athlete agent who causes an NCAA violation by intentionally interfering with the contract between the university and the student-athlete. Such a claim generally requires that the conduct of the accused be intentional, that it interfere with an existing contract (usually by causing the other party to break its contract with the complainant), that the accused knew of the existing contract, and that the complainant actually suffered some sort of pecuniary damages.

Presumably these criteria would be satisfied where an athlete agent contracts with a student-athlete to the detriment of a university because the agent would know, or be presumed to know, of the student-athlete's scholarship, financial aid, or other agreement with the university and that violating NCAA rules (by contracting with the student-athlete) breaches the student-athlete's contract with the university. The university may also have suffered pecuniary damages as a result of NCAA penalties.

Finally, existing state criminal laws also provide some protection from unscrupulous agents. Agents can also be prosecuted under state laws dealing with bribery and unlawful trade practices. For example, a Florida agent was convicted in 2001 for offenses of fraud, conspiracy, and obstruction of justice relating to his activities as an agent.[8]

Players' associations regulate their own agents

Each of the major sports has its own players' association (for example, the National Football League Players Association, National Basketball

Association Players Association, and Major League Baseball Players Association). These associations also regulate their own agents. For example, agents who wish to represent football athletes must register with the National Football League (NFL) Players Association. To qualify for its certification, the association requires agents to possess both an undergraduate and a post-graduate degree (either a Master's degree or law degree) from an accredited institution; pay a $1,650 application fee; undergo a background investigation; and pass an exam testing knowledge of the League's collective bargaining agreement and other NFL rules.

As such, the industry's own internal controls are likely to be at least as effective as state regulation, if not more so, making the need for state regulation redundant. Furthermore, as one athlete agent told us, players association certification is far more important to an agent than a state license because "if you lose the players association certification, you're done."

Arguments Supporting Regulation Are Not Sufficient To Warrant State Intervention

When assessing the need for regulation, the onus is on proponents of the measure to demonstrate the need for regulation. We determined that although some of our criteria for recommending regulation were met, on balance the arguments in support of regulation were not sufficient to warrant state intervention. For instance, we found that although most other states regulate athlete agents and the impact of regulating agents to both taxpayers and consumers is likely to be minimal, the real reason for the proposed legislation is national uniformity rather than an actual need to protect consumers as is required by Section 26H-2, HRS.

Some licensing criteria were met

The Hawai'i Regulatory Licensing Reform Act, Chapter 26H, HRS, provides that proposed legislation of an occupation should occur for the right reasons. Regulation is an exercise of the State's police power and should therefore not be imposed lightly. Its primary purpose is to ensure consumer protection.

Most other states regulate athlete agents

As noted in Chapter 1, most states regulate athlete agents. As of June 12, 2006, 35 states plus the District of Columbia and the U.S. Virgin Islands had enacted a Uniform Athlete Agents Act. Five other states had previously existing non-UAAA legislation regulating athlete agents, making a total of 40 states and territories that regulate athlete agents.

However, as shown in Exhibit 1.1, there is little consistency in the way athlete agents are regulated across the country. Differences exist not

only in the type of regulation (for instance, 22 states "regulate" athlete agents, while eight states "license" them), but more importantly, renewal periods vary and there are significant differences in regulation fees.

For example, Exhibit 1.1 shows that among the 36 states and the District of Columbia we contacted, the highest regulatory fee is $2,500 (Delaware). Several states have fees of $1,000 or more (Florida, Maryland, Oklahoma, Texas); many have fees around $500 (Arkansas, D.C., Kansas, Minnesota, Missouri, Nevada, Ohio, South Carolina, Tennessee, Utah). The lowest regulatory fees are $0 (South Dakota and Washington) and $20 (Arizona). Most of the remaining states we contacted have fees ranging from $100-$300 ($100 - Louisiana, Mississippi, New York; $200 - Alabama, Connecticut, Georgia, Montana, North Carolina, Pennsylvania; $250 - Idaho, Oregon; $300 - Iowa, Kentucky). Most states require renewals every two years.

However, the fact that most other states regulate athlete agents does not of itself present a convincing argument for Hawai'i to follow suit.

Cost of regulating athlete agents is likely to be minimal

Another important criterion in recommending regulation of a profession is that it must be self-sustaining, meaning it must pose no burden to the taxpayer. We found that, according to figures provided by the Department of Commerce and Consumer Affairs (DCCA), the cost of regulating athlete agents is likely to be minimal. The Department estimates that there would be a $60 application fee, $130 initial license fee (plus $35 Registered Industries Complaints Office fee), and $95 biennial renewal fee (plus the RICO fee). Based on the current estimate that there are only three athlete agents operating in Hawai'i, the Department does not anticipate requiring additional staff to administer the program.

Regulation of athlete agents is not likely to impact the cost of goods or services to student-athletes

In addition, the regulation of athlete agents is not likely to impact the cost of goods or services to student-athletes. If Hawai'i's regulatory fees were to be set on par with those around the country (anywhere from $0 to $2,500), the impact to agents, who may earn well into seven or eight figures, is miniscule and would therefore not likely affect the fees that agents charge to student-athletes (consumers).

Regulation of athlete agents is not likely to unreasonably restrict potential agents' ability to enter the field in Hawai'i

Again following the State's strict sunrise criteria as set out in Section 26H-2, HRS, we also found that the regulation of athlete agents

is not likely to unreasonably restrict potential agents' ability to join the field in Hawai'i. As discussed above, regulatory fees are extremely low compared to agents' multi-figure salaries and are therefore not likely to impede a potential agent's entry into the field. Similarly, the degree of regulation proposed (registration) is the least burdensome form of regulation. Both paperwork and fees would be minimal for agents proposing to enter the field in Hawai'i. However, we do note that it is possible that some agents would be deterred from registering in Hawai'i, knowing that anything they reveal on their registration application is subject to public disclosure under Hawai'i's open information laws. Nevertheless, given the number of agents currently operating in Hawai'i (three), it is unlikely that this possibility will curtail future potential applicants.

Real reason for proposed legislation is national uniformity

We found that, contrary to the express requirement under Chapter 26H that regulation be undertaken only when reasonably necessary to protect the public's health, safety, or welfare, the real reason for the proposal to regulate athlete agents in Hawai'i is to promote national uniformity in state laws. The primary proponent of the legislation, the state Commission on Uniform Laws, concedes that the proposal is primarily intended to further the National Conference of Commissioners on Uniform State Laws (NCCUSL)'s agenda to standardize legislation throughout the country. The commission is aware of the lack of abuses caused by athlete agents in Hawai'i but contends that regulation is desirable as a preventative measure and as part of a national scheme or effort to regulate athlete agents in every state.

Proposed Regulatory Measure Is Problematic

Finally, we also found that the Uniform Athlete Agents Act as proposed in H.B. No. 2440 is problematic. There are several ambiguities in the proposed regulation which would pose problems to administrators and make enforcement difficult. The bill also contains outdated language that should be removed if the legislation is enacted.

Determining who is qualified would be difficult

For instance, it would be difficult for the regulating agency to determine who is competent to be registered. Section -4 of the bill requires an applicant to disclose the applicant's name, address, place of business, etc., and describe the applicant's formal training and practical experience as an athlete agent and relevant educational background. However, as noted by the agency designated to administer the provision, the Department of Commerce and Consumer Affairs (DCCA), it is of questionable value to rely on the applicant's disclosures without any verification on the part of the agency. There is nothing in the bill directing the agency to conduct such verifications.

Similarly, other answers to screening questions would merit verification, including whether the applicant has been convicted of a crime involving moral turpitude or a felony; whether the applicant has had any judicial determination against the applicant for false, misleading, deceptive, or fraudulent representations; instances where the applicant's conduct resulted in sanctions, suspensions, or declarations of ineligibility to participate in an interscholastic or intercollegiate athletic event to an educational institution; occupational or professional conduct sanctions, suspensions, or disciplinary action against the applicant; and any denials, suspensions, revocations, or refusals of applications for registration or other licensure as an athlete agent in any other state. Again, the bill stipulates only that these be disclosed, not that they be verified. The only control on the information is that the disclosure must be made subject to penalty of perjury.

Other states' regulators also have pointed out that despite the number of states that have adopted the UAAA, there is no uniformity or guidance for administrators tasked with overseeing and implementing the regulation. Terms such as "qualifying experience," "financial solvency," and "fiduciary capacity" are particularly problematic. They present a standard of conduct that, without more specific language, are difficult for regulators to enforce.

"Moral turpitude" is an obsolete requirement

Section -4(8) of the proposed bill requires that an applicant must disclose and identify whether the applicant, or anyone else named in the application, has been convicted of a crime that, if committed in Hawai'i, "would be a crime involving moral turpitude."

However, it is no longer permissible in Hawai'i to use "moral turpitude" as a grounds for denial of licensing, certification, or registration. The criteria has been deemed too subjective, thus making it an unfair question. The focus should be on the nexus between the crime and the type of licensure sought. In order for conviction of a crime to count as a means to deny licensure, it must be related to the profession or vocation: for example, conviction for a white collar crime such as money laundering may be enough to deny licensure as a mortgage broker or real estate broker, but it may not be sufficient for denying licensure as a nurse.

Conclusion

Satisfying some of Hawai'i's strict regulation criteria in Chapter 26H, our findings suggest that most other states do regulate athlete agents; the cost of regulating athlete agents is likely to be minimal, both to taxpayers and to the regulated profession; regulation of athlete agents is not likely

to impact the cost of goods or services to student-athletes; and regulation of athlete agents is unlikely to unreasonably restrict potential agents' ability to join the field in Hawai'i.

However, we found that on balance, regulation of athlete agents in Hawai'i is not warranted. Specifically, regulation of athlete agents is not necessary to protect the health, safety, or welfare of Hawai'i's citizens as required under Chapter 26H. Unregulated athlete agents in Hawai'i do not present a clear and present danger to the public's health, safety, or welfare and would therefore be a waste of taxpayers' money; and there is no evidence of abuses to student-athletes or institutions in Hawai'i to date. Thus, the incidence or severity of harm based on documented evidence is nonexistent and therefore not sufficiently real or serious to warrant regulation.

We also found that the real reason for the proposed regulation is national uniformity following the agenda of the National Conference of Commissioners on Uniform State Laws (NCCUSL), which drafted the model uniform law.

Furthermore, we also found that existing alternatives, such as the federal SPARTA law, other federal and state laws, and national players' association regulations, already provide sufficient protection to consumers (student-athletes and educational institutions).

Finally, we found that the proposed regulatory measure is problematic. H.B. No. 2440, H.D. 2, S.D. 2 as proposed has ambiguities that would make enforcement difficult and contains an obsolete, overly subjective requirement that should be deleted if the legislation is enacted.

Recommendations

1. We recommend that H.B. No. 2440 of the 2006 Regular Session not be enacted.

2. However, should H.B. No. 2440 be enacted, we recommend that:

    a. The requirement to disclose crimes of "moral turpitude" be removed;

    b. It be made clear there is no obligation on the State to verify the details contained in applications; and

    c. As proposed in H.B. 2440, regulation be the least restrictive type, registration (similar to business registration).

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Notes

Chapter 1

1 Benjamin Shimberg and Doug Roederer, *Questions a Legislator Should Ask*, 2d ed., The Council on Licensure, Enforcement and Regulation, Lexington, Kentucky, 1994, p. 24.

Chapter 2

1. National Football League Players Association (NFLPA); National Basketball Association Players Association (NBAPA), and Major League Baseball Association Players Association (MLBPA).

2. Since January 1, 2001, the NCAA has processed 32 cases involving prospective student-athletes or enrolled student-athletes who were involved in violations of NCAA agent legislation. Note that these cases only include situations where an institution requested reinstatement for a student-athlete involved in an agent violation.

3. Note - NCAA legislation allows a student-athlete to seek advice from a lawyer.

4. Benjamin Shimberg and Doug Roederer, *Questions a Legislator Should Ask*, 2d ed., The Council on Licensure, Enforcement and Regulation, Lexington, Kentucky, 1994.

5. Only tertiary academic institutions can be members of the NCAA and incur NCAA penalties for violations of student-athlete eligibility.

6. NCAA participation is ranked by athletic competitiveness of the academic institution, ranging from Division 1 (highest) to Division 3.

7. Eric Willenbacher, "Regulating Sports Agents: Why Current Federal And State Efforts Do Not Deter The Unscrupulous Athlete-Agent and How A National Licensing System May Cure The Problem," (2004) 78 *St. John's University Law Review* 1231.

8. William "Tank" Black. See Willenbacher at p. 1236.

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Response of the Affected Agency

Comments on Agency Response

We transmitted a draft of this report to the Department of Commerce and Consumer Affairs on December 21, 2006. A copy of the transmittal letter to the department is included as Attachment 1. The department declined to respond.

ATTACHMENT 1

STATE OF HAWAI'I
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawai'i 96813-2917

MARION M. HIGA
State Auditor

(808) 587-0800
FAX: (808) 587-0830

December 21, 2006

COPY

The Honorable Mark E. Recktenwald, Director
Department of Commerce and Consumer Affairs
King Kalakaua Building
335 Merchant Street
Honolulu, Hawai'i 96813

Dear Mr. Recktenwald:

Enclosed for your information are three copies, numbered 6 to 8, of our confidential draft report, *Sunrise Analysis: Athlete Agents*. We ask that you telephone us by Tuesday, December 26, 2006, on whether or not you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Friday, December 29, 2006.

The Governor and presiding officers of the two houses of the Legislature have also been provided copies of this confidential draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

Marion M. Higa
State Auditor

Enclosures