



Legislative Fiscal Bureau

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February 17, 2004

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 403: Regulation of Athlete Agents

Assembly Bill 403 would require the Department of Regulation and Licensing (R&L) to directly regulate agents that represent student athletes. Assembly Bill 403 was introduced on June 12, 2003, and was referred to the Assembly Committee on Colleges and Universities. On January 5, 2004, the Committee adopted Assembly Amendment 1, and recommended AB 403, as amended, for passage on a 12-0 vote. On January 5, 2004, the bill was referred to the Joint Committee on Finance.

The bill would regulate athlete agents who represent student athletes by enacting the Uniform Athlete Agents Act, which was approved by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 2000. The NCCUSL is a non-profit unincorporated association, comprised of state commissions on uniform laws from each state, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. Each jurisdiction determines the method of appointment and the number of commissioners actually appointed. Most jurisdictions provide for their commission by statute. Membership from Wisconsin includes the Director of the Legislative Council or his or her designee, the Chief of the Legislative Reference Bureau or his or her designee, the Revisor of Statutes, one member from each of the major parties in the Senate and Assembly, and two public members appointed by the Governor as provided under s. 13.55 of the statutes.

CURRENT LAW

Under current law, athlete agents are not regulated by the state.

SUMMARY OF BILL

Athlete Agent Registration

Assembly Bill 403 would prohibit an individual from acting as an athlete agent without having registered with R&L as an athlete agent. Prior registration would not be required where a student athlete initiated communication with the individual, however, in such a case, the agent would have to apply for registration within seven days of acting as an agent. Under the bill, any "agency contract," defined as an agreement in which a student athlete authorizes a person to negotiate or solicit a professional-sports-services contract or an endorsement contract on their behalf, would be voided if the agent violates the proposed athlete agent registration requirements. Athlete agents would be regulated by the Secretary of R&L, rather than by a separate licensing board.

The bill would define an "athlete agent" as an individual that enters into an agency contract with a student athlete, recruits or solicits a student athlete to enter into such a contract, or represents to the public that he or she is an athlete agent. An individual would not be considered an athlete agent if: (1) the individual is a spouse, parent, sibling, grandparent, or guardian of the student athlete being represented; (2) the individual is acting solely on behalf of a professional sports team or professional sports organization; or (3) the individual is providing information to a student athlete, but who does not recruit or solicit the student athlete to enter into an agency contract.

Assembly Bill 403 would define a "student athlete" as an individual who engages in, or is eligible to engage in, any intercollegiate sport. The bill defines a "professional-sports-services contract" as an agreement in which an individual is employed, or agrees to render services as a player on a professional sports team, with a professional sports organization, or as a professional athlete.

Athlete Agent Application Requirements

The bill would specify that an individual seeking registration as an athlete agent must submit information on a signed application created by R&L that includes:

1. the name of the applicant, and the applicant's principal place of business;
2. the name of the business or employer of the applicant;
3. any business or occupation of the applicant over the five years preceding the application;
4. a description of the applicant's formal training, practical experience, and educational background relating to abilities as an athlete agent;

5. the name, sport, and last-known team for each individual represented by an athlete agent for the five years preceding the application;
6. the requestor's partners, members, officers, managers, associates, or profit sharers [unless the requestor is part of a corporation];
7. the names and addresses of the officer's, directors, and shareholders with at least 5% interest in the corporation [if the applicant is part of a corporation];
8. whether the applicant, or a partner, member, officer, manager, associate, profit sharer, or shareholder ["business associate"] has ever been convicted of a felony;
9. whether the applicant or business associate has ever made false, misleading, deceptive, or fraudulent claims as determined by an administering agency or a court of law;
10. whether the conduct of an applicant or business associate has ever resulted in the imposition of a sanction, suspension, or declaration of ineligibility for a student-athlete or an educational institution;
11. any sanction, suspension, or disciplinary action taken against the applicant or business associate, as a result of occupational or professional conduct; and
12. whether the athlete agent application, or such an application of a business associate, has been denied, or a registration of these individuals has ever been suspended or revoked in this state.

Under AB 403 an application would have to include payment of an initial application fee. Under current law, the initial fee for R&L regulated businesses and occupations is \$53.

Assembly Bill 403 would authorize an individual holding a certificate of registration or license as an athlete agent in another state to submit a copy of that state's application and a copy of the certificate to R&L. Registrations from other states would be accepted if: (1) the other state's application was submitted within six months of the Wisconsin application; (2) the individual certifies that all of the information on that application is still accurate; (3) the applications are substantially similar; and (4) the other state's application was signed by the applicant under penalty of perjury.

Under the bill, R&L would have to register an applicant as an athlete agent, unless the Department determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness as an athlete agent. In making this determination, R&L could consider whether the applicant engaged in any of the following:

1. had been convicted of a crime that if committed in Wisconsin would be a felony;

2. made a materially false, misleading, deceptive, or fraudulent representation in the athlete agent application;
3. conduct that would disqualify the applicant from serving in a fiduciary capacity or unprofessional conduct, as determined by rule by the Department;
4. conduct that violates prohibitions specified in the bill;
5. had a registration or licensure as an athlete agent suspended, revoked, or denied or been refused licensure as an athlete agent in any state;
6. conduct that caused a sanction, suspension, or declaration of ineligibility to be imposed upon a student athlete or an educational institution; and
7. conduct that significantly adversely reflects on the applicant's credibility, honesty, or integrity.

The bill would authorize the Department to suspend, revoke, or refuse to renew an athlete agent's registration for engaging in any of the above activities. The bill would also require R&L to consider how recently such conduct occurred, the nature and context in which the conduct occurred, and any other relevant conduct of the applicant in making a determination on whether to accept or deny the application. Under the bill, R&L could not deny, suspend, revoke, or refuse to renew a certificate of registration or licensure unless proper notice and an opportunity for a hearing was granted.

Application Renewal

The bill would allow a registered athlete agent to submit a signed application for renewal on July 1 of each even-numbered year on a form specified by R&L that includes up-to-date information on all matters required in the original application. Renewal applications would have to include renewal fee payments established specifically for registered athlete agents, which the bill would establish at \$53. The renewal application would be open for public viewing during reasonable business hours, as determined by R&L. Assembly Bill 403 would allow an individual that holds a certificate of registration or license as an athlete agent in another state to submit a copy of that state's renewal application along with a copy of the granted certificate of registration or licensure to R&L, instead of the Department's application, as long as the other state's application was submitted within six months of the Wisconsin application, the individual certifies that all of the information on that application is accurate, the applications are substantially similar, and the other state's application was signed by the applicant under penalty of perjury. The certificate of registration or a renewal of a registration would be valid for two years.

Temporary Registration

Assembly Bill 403 would authorize R&L to issue temporary certificates of registration to an athlete agent applicant while review of an initial application or renewal is pending. The Department would have to promulgate rules to establish guidelines for the issuance of such temporary registrations.

Athlete Agent Prohibited Conduct

The bill would prohibit an athlete agent from engaging in the following conduct with the intent to induce a student athlete to enter into an agency contract: (1) make materially false promises or representations; (2) furnish anything of value to the student athlete before the student athlete enters into an agency contract; or (3) furnish anything of value to another individual, including another athlete agent.

The bill would also prohibit an athlete agent from intentionally engaging in certain conduct, including the following: (1) initiating contact with a student athlete unless the athlete agent is registered under the bill; (2) refusing or failing to retain or permit inspection of required records; (3) failure to register within the guidelines of this bill [generally before contact is made by an athlete agent about student-athlete representation]; (4) providing materially false or misleading information on an application; (5) falsifying the date of a contract [predating or postdating a contract]; (6) failing to notify a student about the impact of signing an agency contract in regards to the student-athlete's eligibility. Under the bill, an athlete agent who violated these provisions could be fined up to \$10,000, imprisoned up to nine months, or both. In addition, under AB 403, the Department could assess forfeiture against an athlete agent for up to \$25,000 for violating any provision of the bill.

Athlete Agent Records

An athlete agent would have to keep the following records for at least five years: (1) the name and address of each individual represented by the agent; (2) all agency contracts entered into by the athlete agent; and (3) all direct costs incurred by the athlete agent in the recruitment and solicitation of a student athlete. These records would have to be available for public inspection during normal business hours. The bill would also specify that the athlete agent would have to provide a copy of any of these records, upon demand to R&L.

Licensure Restrictions for Owed Child Support

Under the bill, an applicant for an athlete agent license would be required to submit their social security number (or an official statement declaring that they do not have a social security number) to the Department of Agriculture, Trade, and Consumer Protection to insure that the applicant does not owe past-due child support. Applicants could not receive athlete agent licenses if they failed to meet current law requirements for child support payments. Under current law, certain licensing agencies and credentialing boards are required to restrict, suspend, or deny the

drivers', professional, occupational, and recreational licenses of individuals who owe past-due support or who fail to comply with subpoenas or warrants relating to paternity or child support proceedings. A license restriction, suspension, or denial will remain in effect for five years (six months for failure to comply with a subpoena or warrant) or until the individual satisfies the support delinquency, complies with the subpoena or warrant, or enters into an alternative payment arrangement, whichever comes first.

Contract Requirements

The bill would establish specific requirements for all agency contracts (agreements in which a student athlete authorizes a person to negotiate or solicit on behalf of the student athlete a professional-sports-services contract or endorsement contract). The agency contract would have to be inscribed in a tangible form that can be readily viewed and signed or otherwise authenticated by the student-athlete and the athlete agent. Upon execution of the contract, at least one copy of the contract must be given to the student-athlete. The agency contract would have to contain: (1) the amount and means of calculating how much an athlete agent will be compensated in exchange for services provided to the student-athlete; (2) the name of any person not listed in the application for registration that would be compensated due to the student athlete signing the contract; (3) a description of any expenses the student athlete would reimburse; (4) a description of the services that are to be provided to the student athlete; (5) the duration of the contract; and (6) the effective date of the contract.

In addition to these requirements, the bill would specify that each agency contract must contain the following warnings near the signature of the student athlete, in boldface type and in 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."

Under the bill, any agency contract that did not conform to the above provisions could be voided by the student athlete, in which case the student-athlete would not have to make any payment to the athlete agent, nor return anything received from the agent used to induce the

student-athlete to enter into a contract. The student athlete may not waive the right to cancel an agency contract.

Notice to Educational Institutions

The bill would require, effective on the date of publication, both the student athlete and the athlete agent to inform the relevant educational institution's athletic director within 72 hours of a student athlete entering an agency contract, or before the next scheduled athletic event, whichever occurs first.

Educational Institution Civil Remedies

An institution would be allowed to bring a civil action against an athlete agent, or a former student-athlete for damages caused by violations of any of the bill's provisions. Recoverable costs, under the bill, could include: (1) prevailing party costs, such as filing fees and staff costs, and reasonable attorney fees; and (2) damages caused to an educational institution, including losses and expenses incurred due to sanctions against the institution. Under the bill, the right of action would not accrue until the educational institution is made aware of any violation. The bill would specify that the athlete agent and student-athlete could be sued independent of one another and that the remedies specified under these provisions are not limiting to other potential actions against any of the parties. An educational institutions ability to seek civil remedies for damages caused by an athlete agent or a student athlete would be limited to losses and expenses that occur after the effective date of the proposed provisions.

Service of Process in Civil Action

The bill would specify that a registered nonresident athlete agent would have to appoint the Secretary of State as their individual agent for service of process in any civil action in this state regarding that agent's services provided in this state. This would allow an individual seeking a civil dispute resolution with a nonresident athlete agent to serve the papers to the Secretary of State in cases where the registration holder could not be served directly.

Miscellaneous Provisions

The bill would specify that in applying and construing provisions of the bill, consideration be given to the promotion of uniformity of the law among states that enact the Uniform Athlete Agents Act.

The bill would provide that electronic records and signatures on agency contracts would have to conform to section 102 of the federal Electronic Signatures in Global and National Commerce Act.

Under a nonstatutory provision in AB 403 athlete agents and student athletes that are under contract on the effective date of the bill, may perform their obligations, and exercise their rights,

under the existing contract, but once the old contract expires, or is extended, modified, or renewed the provision requirements of this bill would have to be included.

Effective Date

The provisions of this bill would take effect on the first day of the 7th month beginning after publication.

ASSEMBLY AMENDMENT 1

Assembly Amendment 1 to Assembly Bill 403 (AA 1) would modify the fee schedule for athlete agents by specifying that R&L would establish both the initial and renewal fees by administrative rule, rather than having the fees established in statute, and that these fees would be assessed upon granting a certificate of registration to an applicant. Assembly Amendment 1 would specify that the Department, based on the length of the initial registration, would prorate the license renewal fee. (This provision does not currently apply to other regulated professions.) Under current law, R&L is required by s. 440.03(9) of the statutes to include with each biennial budget the results of its analysis of the adequacy of initial and renewal fees in support of the Department's budget. Based on this analysis, R&L makes recommendations for the initial and renewal fees established in statute [ss. 440.05(1) and 440.08(2) of the statutes respectively].

The Department, under AA 1, would be allowed to establish emergency rules for initial and renewal fees, until such time as the permanent rules become effective, not to exceed 150 days unless extended by the Joint Committee on Review of Administrative Rules. The amendment would specify that the Department would not have to provide evidence that promulgating these rules is an emergency necessary for the preservation of peace, health, safety, or welfare, and would not be required to provide findings of emergency rules promulgated under these provisions.

Assembly Amendment 1 would add the following italicized language to the warning that would have to be provided on an agency contract. As amended the warning would state:

"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 *or before the next scheduled athletic event in which you may*

participate, whichever occurs first, 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."

Finally AA 1, would delete references to student-athlete in civil remedies, thereby modifying the bill to specify that civil remedies could be sought only against the athlete agent.

TECHNICAL AMENDMENT

Assembly Bill 403 would require an athlete agent applicant to submit their social security number to the Department of Agriculture, Trade, and Consumer Protection (DATCP) to insure that the applicant does not owe past-due child support. However, under current law, all occupations and businesses regulated by R&L are already required to meet these standards [s. 440.13 of the statutes]. This current law provision would apply to athlete agents as a result of the bill. The Legislative Reference Bureau indicates that inclusions of the provision under DATCP was a drafting error, and the provision should be deleted.

FISCAL EFFECT

Assembly Bill 403

The bill would provide \$31,900 PR and 0.5 PR authorized position annually to the general operations appropriation [s. 20.165(1)(g) of the statutes] for services related to the regulation of athlete agents.

In addition, the Department estimates that it would incur one-time costs of \$22,000 PR including \$12,100 PR for administrative rule-making, \$5,000 PR for furniture, hardware, and software, \$2,400 PR for modifications to processing systems and website, \$2,000 PR for phone system modifications, and \$500 PR for printing and mailing costs. The Department also estimates ongoing expenses related to the bill of \$8,700 PR for IT support and \$1,200 PR for supplies and materials for the part-time position. These amounts are not appropriated in the bill.

The Department has estimated that 100 athlete agents would register under provisions of the bill, which based on the current \$53 initial fee for business and occupations regulated by the Department, would total \$5,300 in initial revenues in 2004-05. Renewals would be required for July 1, 2006. No renewal fees would be paid in the current biennium. It is therefore estimated that total increased revenues would equal \$5,300 in 2004-05. Of the total, 90% [\$4,800 PR-REV] of these fees would be deposited into the general program operations appropriation [s.

20.165(1)(g) of the statutes] as program revenue and 10% would be deposited in the general fund [\$500 GPR-Earned].

Assembly Amendment 1 to AB 403

Under AA1 to AB 403, the Department would be allowed to establish initial and renewal fees by rule. The initial fees would include a processing fee paid by all applicants, and a fee for granting the certificate. The Department has estimated the total costs related to the regulation of athlete agents at \$63,800 PR including all one-time and ongoing costs listed above. The bill authorizes the expenditure of \$31,900 PR annually.

Under current law, 10% of the amounts collected under the Department's general program operations appropriation [s. 20.165(1)(g) of the statutes] must be deposited in the general fund. If R&L established the rules to recover the amounts appropriated under the bill, and the 10% administrative fee is included, then a total of \$35,400 PR-REV would need to be collected. For an estimated 100 applicants, the initial fees paid by the athlete agents would be \$354 per applicant. If the Department established the fees at an amount sufficient to recover all of the Department's estimated costs related to the regulation of athletic agents, and the 10% administrative fee is included, then the initial fee would have to equal \$709 per applicant.

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