

SPORTS AGENT RESPONSIBILITY AND TRUST ACT

MARCH 5, 2003.—Ordered to be printed

Mr. TAUZIN, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

[To accompany H.R. 361]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 361) to designate certain conduct by sports agents relating to the signing of contracts with student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission, having considered the same, report favorably thereon with amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

The purpose of H.R. 361 is to designate certain conduct by sports agents related to the signing of contracts to represent student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission (FTC). Additionally, H.R. 361 pro-

vides the states with the authority to bring civil action against violators in a district court and provides universities with a right of action against the athlete agent for damages resulting from a violation of the Act.

BACKGROUND AND NEED FOR LEGISLATION

The multimillion-dollar value of professional athlete salaries, signing bonuses, and endorsement contracts has resulted in a proliferation of unscrupulous practices by some sports agents. Unscrupulous agents, or their representatives, are willing to break the rules in order to sign promising student athletes to an agency contract. Agents are willing to do this because the fees that accompany the representation of a professional athlete are considerable, and the consequences that the agent will suffer in comparison to the athlete or school are limited or non-existent.

Motivated largely by financial gain, unscrupulous agents have gone to extreme measures to represent promising student athletes with even a remote chance of becoming a professional athlete. These agents, or their cohorts—often known as “runners”—will use tactics including secret payments to the athlete, undisclosed payments to the family or friends of the athlete who may be in a position to influence the athlete, unrealistic promises, and even pressuring the athlete. In some cases, these agents have made the secret payments to student athletes or their families, and then blackmailed them into signing a contract with the threat that they would disclose the infraction of collegiate rules and threaten the student athlete’s eligibility. These egregious acts go unpunished due to the lack of a Federal law, disparate and sometime ineffective state laws, and the absence of any laws in many states.

The effect of a student athlete entering into an agency contract is generally a forfeiture of collegiate eligibility. The college or university may also be subject to various sanctions for violation of competition rules if contests were played with ineligible athletes. If this occurs, the economic impact to the school and the athlete can be substantial. Not only can a student athlete lose a scholarship, the university can be sanctioned with monetary penalties, loss of scholarships, forfeiture of contests, and loss of television revenue.

Currently there is no Federal law that directly addresses the actions of these agents. However, a majority of the states have a law to regulate athlete agents and/or their conduct, but to varying degree and specificity. Most recently the National Conference of Commissioners on Uniform State Laws passed the Uniform Athlete’s Agent Act (UAAA) in 2000 to provide uniform state laws addressing the conduct and practices of athlete agents, including registration of agents. It has since been adopted by sixteen states and introduced in the legislatures of twelve others. Of the states that have not enacted the UAAA, 18 have existing athlete agent laws while sixteen have no law that directly addresses athlete agent conduct. H.R. 361 will provide remedies to protect student athletes and the educational institutions, particularly in those states with no existing law addressing athlete agent conduct.

HEARINGS

The Committee on Energy and Commerce has not held hearings on the legislation.

COMMITTEE CONSIDERATION

On Wednesday, January 29, 2003, the Full Committee on Energy and Commerce met in open markup session and ordered H.R. 361 favorably reported to the House, without amendment, by a voice vote, a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 361 reported. A motion by Mr. Tauzin to order H.R. 361 reported to the House, without amendment, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has not held oversight or legislative hearings on this legislation.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal of H.R. 361 is to define the prohibited conduct employed by individuals to entice or solicit student athletes to enter into an agency contract, whether it is a written or oral agreement, as well as require written disclosure to the student athlete prior to signing a contract and to the educational institution after a contract has been entered.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 361, the Sports Agent Responsibility and Trust Act, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
 CONGRESSIONAL BUDGET OFFICE,
Washington, DC, January 31, 2003.

Hon. W.J. "BILLY" TAUZIN,
*Chairman, Committee on Energy and Commerce,
 House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 361, the Sports Agent Responsibility and Trust Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Ken Johnson (for federal costs), Victoria Heid Hall (for the state and local impact), and Paige Piper/Bach (for the private-sector impact).

Sincerely,

WILLIAM J. GAINER
 (For Barry B. Anderson, Acting Director).

Enclosure.

H.R. 361—Sports Agent Responsibility and Trust Act

H.R. 361 would impose certain restrictions on contracts between sports agents and student athletes. For example, the bill would prohibit sports agents from soliciting such a contract by making false promises or offering gifts. These new rules would be enforced by the Federal Trade Commission (FTC) through civil penalties and by the states.

CBO estimates that enacting H.R. 361 would not have a significant impact on the federal budget. Based on information from the FTC, CBO expects that enforcement of the bill would occur mostly at the state level. Therefore, CBO expects that any increase in civil penalties resulting from the enactment of H.R. 361 would be insignificant. (Such penalties are recorded in the budget as revenues). Similarly, we estimate that implementing H.R. 361 would increase the FTC's costs by less than \$500,000 annually, assuming the availability of appropriated funds.

H.R. 361 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

H.R. 361 would impose private-sector mandates as defined by UMRA on certain sports agents and student athletes. The bill would prohibit a sports agent from providing anything of value to a student athlete or anyone associated with the athlete before entering into a contract. An agent also would be required to provide a student athlete with a specific disclosure document before entering into an agency contract and could not predate or postdate such a contract. The bill would require a student athlete, or the athlete's parents or legal guardian if the student is under the age of 18, to sign the disclosure document prior to entering into an agency contract. In addition, the bill would require the sports agent and student athlete to each inform the student's educational institution within a specific time frame that the athlete has entered into an agency contract. Based on information from government sources, CBO estimates that the direct cost of those mandates would fall well below the annual threshold established by UMRA for private-

sector mandates (\$117 million in 2003, adjusted annually for inflation).

The CBO staff contacts for this estimate are Ken Johnson (for federal costs), Victoria Heid Hall (for the state and local impact), and Paige Piper/Bach (for the private-sector impact). The estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 designates the legislation as the “Sports Agents Trust and Responsibility Act.”

Section 2. Definitions

Section 2 provides definitions for terms incorporated throughout H.R. 361.

Section 3. Regulation of unfair and deceptive acts and practices in connection with the contact between an athlete agent and a student athlete

Section 3 provides for the regulation of conduct between an athlete agent and a student athlete. Subsection (a) defines prohibited conduct for an athlete agent to engage in order to solicit or recruit a student athlete to enter into an agency contract. The legislation makes it unlawful for the athlete agent to give materially false or misleading information, to make materially false promises or representations, or to provide anything of value to the student athlete or anyone associated with the student athlete before he or she signs an agency contract. Additionally, an athlete agent is prohibited from entering into an agency contract with the student athlete without providing the student the written disclosure proscribed by the Act and from either predating or postdating the contract.

Subsection (b) proscribes the terms of the disclosure requirements the athlete agent must provide to the student athlete, or to the student athlete's parent or guardian, and requires the signature of the student athlete, or the student athlete's parent or guardian, prior to entering into the agency contract.

Subsection (b)(3) provides the required language of the disclosure document.

Section 4. Enforcement

Section 4 authorizes the FTC to treat a violation of the Act as a violation of FTC rules defining an unfair and deceptive act or practice under section 18(a)(1)(B) of the FTC Act. This section authorizes the FTC to enforce the Act in the same manner and with the same powers and duties it has under the FTC Act.

Section 5. Actions by states

Section 5 provides the authority and parameters for a state to bring civil action against a violator of the Act. A state attorney general may bring civil action against any person in practice that violates any regulation of the Commission prescribed under section 3 of this Act in Federal district court in order to: (1) enjoin that practice; (2) enforce compliance with the regulation; (3) obtain damage, restitution, or other compensation; or (4) obtain other relief as the court may consider appropriate.

An attorney of the state filing an action under this Act must first provide a written notice of the action and a copy of the complaint to the FTC, unless it is not feasible in which case it must be provided to the FTC at the same time as the action is filed.

Subsection (b) provides the FTC with the authority to intervene in any action brought by a state under this Act. If the Commission intervenes, it maintains the right to be heard and the right to file a petition for appeal.

Subsection (c) provides that an action brought under subsection (a) by an attorney general shall not prevent the attorney general from exercising the powers provided by any other laws of the state.

Subsection (d) stipulates that no state may institute an action under subsection (a) while an action instituted by or on behalf of the Commission is pending.

Subsection (e) provides that an action brought by an attorney general of a state under subsection (a) may be brought in a district court of the United States that meets the venue requirements.

Subsection (f) provides the terms under which process may be served in an action brought under subsection (a).

Section 6. Protection of the educational institution

Section 6 provides safeguards and remedies for educational institutions.

Subsection (a) provides for written notification by the student athlete, and the athlete agent, to the athletic director or appropriate individual responsible for athletic programs of the educational institution. The notification that an agency contract has been entered into must be within 72 hours after entering into the contract or before the next athletic contest in which the student athlete may participate, whichever occurs first.

Subsection (b) provides an educational institution with civil remedy, including a right of action against an athlete agent for damages resulting from a violation of this Act.

Section 7. Sense of Congress

Section 7 expresses the sense of Congress that the States should enact the Uniform Athlete Agent Act of 2000 to protect student athletes and the integrity of amateur sports from unscrupulous sports agents.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation does not amend any existing Federal statute.

