

BILL ANALYSIS

C.S.H.B. 1123
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Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

If a student-athlete receives money, gifts, or anything of value from an athlete agent, the student-athlete can lose an athletic scholarship and the student-athlete's college or university can face severe consequences. C.S.H.B. 1123 seeks to hold athlete agents accountable for their actions by providing stricter administrative and criminal penalties for agents who violate certain regulations and by requiring an athlete agent to deposit a surety bond with the secretary of state before contacting an athlete or entering into an agent contract with an athlete in Texas.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the secretary of state in SECTION 8 of this bill.

ANALYSIS

C.S.H.B. 1123 amends the Occupations Code, in provisions of law relating to the registration of athlete agents, to prohibit a person who is not an individual from registering as an athlete agent in Texas and changes references to a person to references to an individual throughout the bill's provisions. The bill establishes, in the provision of law prohibiting an individual from acting as an athlete agent in Texas or representing that the individual is an athlete agent in Texas unless the individual holds a certificate of registration as an athlete agent, that the registration is for either a professional athlete agent certificate or a limited athlete agent certificate.

C.S.H.B. 1123 prohibits an individual from registering as a professional athlete agent unless the individual is certified as an agent by a national professional sports association, provides that an individual who is not certified as an agent by a national professional sports association may register only as a limited athlete agent and specifies that a limited athlete agent may only represent an athlete in a sport that does not have a national professional sports association. The bill establishes that an agent contract with an athlete in a sport for which there is a national professional sports association is void if the contract is negotiated by an athlete agent holding a limited certificate of registration.

C.S.H.B. 1123 expands the information an applicant is required to provide for an original registration as an athlete agent to include whether the applicant or a person, except a bona fide employee on salary, who is financially interested as a partner, associate, or profit sharer in the applicant's business, has been subject to an arrest for a crime that in Texas is an offense other than a Class C misdemeanor or has been subject to a conviction of a crime that in Texas is a Class A or Class B misdemeanor and the name and address of each national professional sports association that has certified the applicant as an agent.

C.S.H.B. 1123 expands the information an applicant is required to provide for a renewal of such a registration to include the telephone number of each athlete for whom the athlete agent is performing professional services for compensation on the date of the renewal application, the telephone number of each athlete for whom the athlete agent has performed professional services

for compensation during the three years immediately preceding the date of the renewal application but for whom the athlete agent is not performing professional services on the date of the renewal application, and the name and address of each national professional sports association by which the athlete agent is currently certified.

C.S.H.B. 1123 requires a registered athlete agent to notify the secretary of state in writing of the athlete agent's arrest for a crime that in Texas is an offense other than a Class C misdemeanor or decertification as an agent by a national professional sports association that has become final by the conclusion of the appeal process provided by the association. The bill requires the athlete agent to notify the secretary of state not later than 30 days after the date of the arrest or the date that the decertification becomes final and requires the secretary of state to revoke the certificate of registration of an athlete agent decertified by a national professional sports association.

C.S.H.B. 1123 requires an athlete agent, before contacting an athlete or entering into an agent contract with an athlete in Texas, to deposit with the secretary of state a surety bond, in the amount of \$50,000, payable to the state and conditioned on the athlete agent complying with state laws relating to athlete agents, the payment of any administrative penalty assessed under such laws, and the payment of any damages awarded to an institution of higher education or an athlete as a result of the athlete agent offering or providing a thing of value to an athlete or a family member of the athlete. The bill establishes, in provisions of law relating to the minimum period for which an athlete agent is required to maintain a bond for specified purposes, a period of not less than two years after the date the athlete agent's certificate of registration expires or is revoked as an alternative to a period of not less than two years after the date the athlete agent ceases to provide financial services to an athlete, specifying that the minimum period is the later of those two dates.

C.S.H.B. 1123 requires the secretary of state by rule to require that, to the extent practicable, the form for an agent contract or financial services contract conforms to the contract form approved by the national professional sports association for the sport in which the athlete will be represented. The bill extends the deadline by which a registered athlete agent is required to file with certain persons a copy of an agent contract or financial services contract from not later than the fifth day after the date an athlete signs the contract to not later than the 10th day after that date.

C.S.H.B. 1123 includes as a prohibited action by an athlete agent furnishing a thing of value to an athlete or an individual related to the athlete within the second degree by affinity or consanguinity before the athlete completes the athlete's last intercollegiate sports contest, and the committing of an act or causing a person to commit an act on the athlete agent's behalf that causes an athlete to violate a rule of the national association for the promotion and regulation of intercollegiate athletics of which the athlete's institution of higher education is a member. The bill establishes a cap of \$50,000 on the administrative penalty for a violation of those prohibitions and makes a conforming change.

C.S.H.B. 1123 includes as a prohibited action by an athlete agent the dividing of fees with or receiving of compensation from an institution of higher education, including a representative or employee of the institution's athletics department. The bill specifies the prohibition on offering a thing of value to induce the athlete to enter into an agreement with the athlete agent in which the athlete agent will represent the athlete that the thing of value is offered to the athlete or to an individual related to the athlete within the second degree by affinity or consanguinity and that the thing of value is offered before the athlete completes the athlete's last intercollegiate sports contest.

C.S.H.B. 1123 authorizes the secretary of state, if an athlete agent fails to pay the administrative penalty and does not request a hearing relating to the alleged violation or the amount of the penalty or if, after a hearing, an athlete agent fails to pay the required administrative penalty, to revoke or refuse to renew the agent's certificate of registration or refuse to issue a certificate of

registration to the agent.

C.S.H.B. 1123 makes it a third degree felony offense for an athlete agent to intentionally or knowingly furnish a thing of value to an athlete or an individual related to the athlete within the second degree by affinity or consanguinity before the athlete completes the athlete's last intercollegiate sports contest or to intentionally or knowingly commit an act or cause a person to commit an act on the athlete agent's behalf that causes an athlete to violate a rule of the national association for the promotion and regulation of intercollegiate athletics of which the athlete's institution of higher education is a member. The bill requires the secretary of state to send notice of an athlete agent's conviction of an offense for violating provisions of law relating to athlete agents or a rule under those provisions to each national professional sports association that has certified the agent.

C.S.H.B. 1123 removes the authority of an institution of higher education to file suit for damages against a former athlete who causes an institution to be adversely affected by the athlete's violation of provisions of law relating to athlete agents.

C.S.H.B. 1123 authorizes an athlete to file suit against an athlete agent for damages if the athlete is adversely affected by an athlete agent's violation of the prohibition against the agent furnishing a thing of value to an athlete or an individual related to the athlete within the second degree by affinity or consanguinity before the athlete completes the athlete's last intercollegiate sports contest or the prohibition against the agent committing an act or causing a person to commit an act on the athlete agent's behalf that causes an athlete to violate a rule of the national association for the promotion and regulation of intercollegiate athletics of which the athlete's institution of higher education is a member. The bill establishes that an athlete is adversely affected by such violations if the violation causes a national association for the promotion and regulation of intercollegiate athletics to disqualify or suspend the athlete from participating in intercollegiate sports contests and the disqualification or suspension causes the athlete to suffer an adverse financial impact. The bill makes conforming changes.

C.S.H.B. 1123 requires, in provisions of law relating to the required publication by the secretary of state of information prescribing the compliance responsibilities of an institution of higher education relating to governing athlete agents, that such information be published on the secretary of state's Internet website not later than January 1, 2012, and removes the specification that the information be published at least once a year. The bill requires the secretary of state to notify the athletic director or other appropriate official of each institution of higher education of any change to the compliance responsibilities and removes the requirement that the secretary of state mail a copy of the compliance responsibilities to those parties. The bill requires the secretary of state, not later than January 1, 2012, to notify by letter each institution of higher education that would have received a copy of the compliance responsibilities by mail from the secretary of state of the changes in law made by the bill's provisions

C.S.H.B. 1123 requires an individual who submits an application for registration as an athlete agent that is pending on the effective date of the bill to resubmit the application as required by state law, as amended by the bill's provisions.

C.S.H.B. 1123 redefines "athlete agent" to make conforming changes and defines "national professional sports association." The bill makes conforming changes.

C.S.H.B. 1123 repeals the following provisions of the Occupations Code:

- Section 2051.153, relating to the exemption from bond requirements for an athlete agent who enters into only an agent contract with an athlete
- Section 2051.103
- Section 2051.104

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1123 contains provisions not included in the original redefining "athlete agent" and defining "national professional sports association." The substitute contains provisions not included in the original revising the duties of the secretary of state relating to the publishing of and giving notice about information on the compliance responsibilities of an institution of higher education under provisions of law governing athlete agents.

C.S.H.B. 1123 contains a provision not included in the original prohibiting a person who is not an individual from registering as an athlete agent and differs from the original by changing references to a person to references to an individual throughout the substitute's provisions.

C.S.H.B. 1123 contains a provision not included in the original establishing that a certificate of registration held by an athlete agent in Texas is for either a professional athlete agent certificate or a limited athlete agent certificate. The substitute contains provisions not included in the original authorizing an individual who is not certified as an agent by such an association to register only as a limited agent athlete and limiting that agent to representing an athlete in a sport that does not have a national professional sports association. The substitute contains a provision not included in the original making certain agent contracts void if the contract is negotiated by a limited agent athlete.

C.S.H.B. 1123 contains provisions not included in the original requiring an applicant for original registration to provide information on whether the applicant or certain affiliated persons have been subject to an arrest for a crime that in Texas is an offense other than a Class C misdemeanor or have been subject to a conviction of a crime that in Texas is a Class A or Class B misdemeanor. The substitute contains provisions not included in original requiring an applicant for registration renewal to provide the telephone number of each athlete for whom the athlete agent is performing professional services for compensation and for certain athletes for whom the athlete agent has previously performed professional services for compensation.

C.S.H.B. 1123 contains provisions not included in the original requiring a registered athlete agent to notify the secretary of state by a certain date regarding arrest for certain crimes or decertification as an agent by a national professional sports association and requiring the secretary of state to revoke the certificate of registration of an agent decertified by a national professional sports association. The substitute contains a provision not included in the original requiring that the surety bond deposited by an athlete agent be conditioned on the payment of certain damages as a result of the agent offering or providing a thing of value to a family member of the athlete.

C.S.H.B. 1123 contains a provision not included in the original requiring the secretary of state by rule to require certain forms to conform to the contract form approved by the national professional sports association for the sport in which an athlete will be represented. The substitute contains provisions not included in the original extending the deadline by which a registered athlete agent is required to file a copy of an agent contract or financial services contract with certain persons.

C.S.H.B. 1123 contains a provision not included in the original prohibiting an athlete agent from dividing fees with or receiving compensation from an institution of higher education. The substitute contains a provision not included in the original establishing, in the prohibition against an athlete agent offering a thing of value to induce the athlete to enter into an agreement with the athlete agent in which the athlete agent will represent the athlete, that the thing of value is

offered to the athlete or to an individual related to the athlete within the second degree by affinity or consanguinity and that the thing of value is offered before the athlete completes the athlete's last intercollegiate sports contest.

C.S.H.B. 1123 differs from the original, in the prohibition against an athlete agent furnishing a thing of value to an athlete before the athlete completes the athlete's last intercollegiate sports contest, by also prohibiting the thing of value from being furnished to an individual related to the athlete within the second degree by affinity or consanguinity. The substitute contains provisions not included in the original prohibiting an athlete agent from committing an act or causing a person to commit an act on the athlete agent's behalf that causes an athlete to violate certain rules, establishing a cap of \$50,000 on the administrative penalty for a violation of that prohibition, making it a third degree felony offense for an athlete agent to intentionally or knowingly violate that prohibition, authorizing an athlete adversely affected by an athlete agent's violation of that prohibition to file suit against the athlete agent for damages, and specifying circumstances under which an athlete is adversely affected by an athlete agent's violation of that prohibition.

C.S.H.B. 1123 contains provisions not included in the original repealing Sections 2051.103 and 2051.104, Occupations Code, and requiring the secretary of state, not later than January 1, 2012, to notify by letter certain institutions of higher of education of certain changes in law made by the substitute and to post certain information on the secretary of state's Internet website. The substitute differs from the original by making conforming changes.