

SENATE AMENDMENTS

2nd Printing

By: Dutton

H.B. No. 1123

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the regulation of athlete agents; providing
3 administrative and criminal penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 2051.001, Occupations Code, is amended
6 by amending Subdivision (3) and adding Subdivision (5-a) to read as
7 follows:

8 (3) "Athlete agent" means an individual [~~a person~~]
9 who:

10 (A) for compensation, directly or indirectly
11 recruits or solicits an athlete to enter into an agent contract, a
12 financial services contract, or a professional sports services
13 contract with that individual [~~person~~] or another person; or

14 (B) for a fee, procures, offers, promises, or
15 attempts to obtain employment for an athlete with a professional
16 sports team.

17 (5-a) "National professional sports association"
18 means an organization that licenses or certifies athlete agents to
19 represent athletes in a particular professional sport. The term
20 includes the National Football League Players Association,
21 National Basketball Players Association, Major League Baseball
22 Players Association, National Hockey League Players' Association,
23 and United States Soccer Federation.

24 SECTION 2. Sections 2051.052(a) and (b), Occupations Code,

1 are amended to read as follows:

2 (a) The secretary of state shall~~[, at least once a year,]~~
3 publish on the secretary of state's Internet website information
4 that prescribes the compliance responsibilities of an institution
5 of higher education under this chapter.

6 (b) The secretary shall notify ~~[mail, return receipt~~
7 ~~requested, a copy of the compliance responsibilities published~~
8 ~~under Subsection (a) to]~~ the athletic director or other appropriate
9 official of each institution of higher education of any change to
10 the compliance responsibilities of the institution under this
11 chapter.

12 SECTION 3. Section 2051.101, Occupations Code, is amended
13 by amending Subsections (a) and (b) and adding Subsections (a-1),
14 (a-2), (d), and (e) to read as follows:

15 (a) Except as provided by Subsection (b), an individual [~~a~~
16 ~~person~~] may not act as an athlete agent in this state or represent
17 that the individual [~~person~~] is an athlete agent in this state
18 unless the individual [~~person~~] holds a certificate of registration
19 under this chapter as:

- 20 (1) a professional athlete agent; or
21 (2) a limited athlete agent.

22 (a-1) An individual may not register as a professional
23 athlete agent under this chapter unless the individual is certified
24 as an agent by a national professional sports association.

25 (a-2) An individual who is not certified as an agent by a
26 national professional sports association may register only as a
27 limited athlete agent. A limited athlete agent may only represent

1 an athlete in a sport that does not have a national professional
2 sports association.

3 (b) Before the issuance of a certificate of registration
4 under this chapter, an individual [~~a person~~] may act as an athlete
5 agent in this state for all purposes except signing an agent
6 contract, if:

7 (1) an athlete or a person acting on behalf of the
8 athlete initiates communication with the individual [~~person~~]; and

9 (2) within seven days after the date of the initial act
10 as an athlete agent, the individual [~~person~~] submits an application
11 for registration under this chapter.

12 (d) An agent contract with an athlete in a sport for which
13 there is a national professional sports association is void if the
14 contract is negotiated by an athlete agent holding a limited
15 certificate of registration.

16 (e) A person who is not an individual may not register as an
17 athlete agent in this state.

18 SECTION 4. Sections 2051.102(b) and (e), Occupations Code,
19 are amended to read as follows:

20 (b) An applicant must provide information required by the
21 secretary of state, including:

22 (1) the applicant's:

23 (A) name;

24 (B) principal business address;

25 (C) business or occupation for the five years
26 immediately preceding the date of application; and

27 (D) formal training, practical experience, and

1 educational background relating to the applicant's professional
2 activities as an athlete agent;

3 (2) the name, sport, and last known team for each
4 person the applicant represented as an athlete agent during the
5 five years immediately preceding the date of application;

6 (3) whether the applicant or a person described by
7 Subdivision (5) has been subject to any of the following:

8 (A) an arrest for a crime that in this state is an
9 offense other than a Class C misdemeanor;

10 (B) a conviction of a crime that in this state is
11 a Class A or Class B misdemeanor, a felony, or a crime of moral
12 turpitude;

13 (C) [~~B~~] an administrative or a judicial
14 determination finding the applicant or other person made a false,
15 misleading, deceptive, or fraudulent representation;

16 (D) [~~C~~] a sanction or suspension related to
17 occupational or professional conduct;

18 (E) [~~D~~] a denial of an application for a
19 certificate of registration or license as an athlete agent; or

20 (F) [~~E~~] a denial, revocation, or suspension of
21 a certificate of registration or license as an athlete agent;

22 (4) whether the applicant or a person described by
23 Subdivision (5) has engaged in conduct resulting in the imposition
24 on an athlete or educational institution of a sanction, suspension,
25 or declaration of ineligibility to participate in an
26 interscholastic or intercollegiate athletic event; [~~and~~]

27 (5) except as provided by Subsection (d), the name and

1 address of each person, except a bona fide employee on salary, who
2 is financially interested as a partner, associate, or profit sharer
3 in the applicant's business; and

4 (6) the name and address of each national professional
5 sports association that has certified the applicant as an agent.

6 (e) An individual [~~A person~~] seeking certification as an
7 athlete agent under this chapter who holds a certificate of
8 registration or license as an athlete agent in another state may
9 submit a copy of the previous application and certificate or
10 license instead of submitting the application required by this
11 section. The secretary of state shall accept the application and
12 the certificate or license from the other state as an application
13 for registration in this state if the application to the other
14 state:

15 (1) was submitted to the other state not earlier than
16 the 180th day before the date the application is submitted in this
17 state and the applicant certifies that the information contained in
18 the application is current;

19 (2) contains information substantially similar to or
20 more comprehensive than the information required by this section;
21 and

22 (3) was signed by the applicant under penalty of
23 perjury.

24 SECTION 5. Sections 2051.108(b) and (e), Occupations Code,
25 are amended to read as follows:

26 (b) A renewal application must include:

27 (1) the name, ~~and~~ address, and telephone number of

1 each athlete for whom the athlete agent is performing professional
2 services for compensation on the date of the renewal application;

3 (2) the name, ~~[and]~~ address, and telephone number of
4 each athlete for whom the athlete agent has performed professional
5 services for compensation during the three years immediately
6 preceding the date of the renewal application but for whom the
7 athlete agent is not performing professional services on the date
8 of the renewal application; ~~[and]~~

9 (3) the name and address of each national professional
10 sports association by which the athlete agent is currently
11 certified; and

12 (4) any other information prescribed by the secretary
13 of state.

14 (e) An individual [~~A person~~] who has submitted an
15 application for renewal of registration or licensure as an athlete
16 agent in another state may submit a copy of the application and
17 certificate of registration or license from the other state instead
18 of submitting the application required by this section. The
19 secretary of state shall accept the application for renewal from
20 the other state as an application for renewal under this section if
21 the application to the other state:

22 (1) was submitted to the other state not earlier than
23 the 180th day before the date the renewal application is submitted
24 in this state and the applicant certifies that the information
25 contained in the application is current;

26 (2) contains information substantially similar to or
27 more comprehensive than the information required by this section;

1 and

2 (3) was signed by the applicant under penalty of
3 perjury.

4 SECTION 6. Subchapter C, Chapter 2051, Occupations Code, is
5 amended by adding Sections 2051.109 and 2051.110 to read as
6 follows:

7 Sec. 2051.109. CONTINUING NOTIFICATION REQUIREMENT. (a) A
8 registered athlete agent shall notify the secretary of state in
9 writing of the athlete agent's:

10 (1) arrest for a crime that in this state is an offense
11 other than a Class C misdemeanor; or

12 (2) decertification as an agent by a national
13 professional sports association that has become final by the
14 conclusion of the appeal process provided by the association.

15 (b) The athlete agent shall notify the secretary of state as
16 required under this section not later than 30 days after the date of
17 the arrest or the date that the decertification becomes final.

18 Sec. 2051.110. EFFECT OF DECERTIFICATION BY PROFESSIONAL
19 ASSOCIATION. The secretary of state shall revoke the certificate
20 of registration of an athlete agent decertified by a national
21 professional sports association.

22 SECTION 7. Section 2051.151, Occupations Code, is amended
23 by amending Subsections (a) and (b) and adding Subsection (a-1) to
24 read as follows:

25 (a) An athlete agent shall, before contacting an athlete or
26 entering into an agent contract with an athlete in this state,
27 deposit with the secretary of state a surety bond, in the amount of

1 \$50,000, payable to the state and conditioned on:

2 (1) the athlete agent complying with this chapter;

3 (2) the payment of any administrative penalty assessed
4 under Subchapter J; and

5 (3) the payment of any damages awarded to an
6 institution of higher education or an athlete as a result of the
7 athlete agent offering or providing a thing of value to an athlete
8 or a family member of the athlete.

9 (a-1) An athlete agent shall, before entering into a
10 financial services contract with an athlete, deposit with the
11 secretary of state a surety bond, in the amount of \$100,000, payable
12 to the state and conditioned on:

13 (1) the athlete agent complying with this chapter;

14 (2) the payment of money owed to an individual or group
15 of individuals when the athlete agent or the athlete agent's
16 representative or agent receives the money; and

17 (3) the payment of damages to an athlete caused by the
18 intentional misrepresentation, fraud, deceit, or unlawful or
19 negligent act or omission of the athlete agent or of the athlete
20 agent's representative or employee while acting within the scope of
21 the financial services contract.

22 (b) An athlete agent shall maintain a bond deposited under
23 Subsection (a) or (a-1) for not less than two years after the later
24 of:

25 (1) the date that the athlete agent ceases to provide
26 financial services to an athlete; or

27 (2) the date that the athlete agent's certificate of

1 registration expires or is revoked.

2 SECTION 8. Section 2051.201, Occupations Code, is amended
3 to read as follows:

4 Sec. 2051.201. CONTRACT FORM. (a) A registered athlete
5 agent must use a form approved by the secretary of state for any
6 agent contract or financial services contract.

7 (b) The secretary of state shall by rule require that, to
8 the extent practicable, the form for an agent contract or financial
9 services contract conforms to the contract form approved by the
10 national professional sports association for the sport in which the
11 athlete will be represented.

12 SECTION 9. Section 2051.205(a), Occupations Code, is
13 amended to read as follows:

14 (a) A registered athlete agent shall, not later than the
15 10th [~~5th~~] day after the date an athlete signs an agent contract
16 or financial services contract, file a copy of the contract with:

- 17 (1) the secretary of state; and
18 (2) if the athlete is a student at an institution of
19 higher education, the athletic director of the athlete's
20 institution.

21 SECTION 10. Section 2051.351(a), Occupations Code, is
22 amended to read as follows:

- 23 (a) An athlete agent may not:
24 (1) publish or cause to be published:
25 (A) false, fraudulent, or misleading
26 information; or
27 (B) a false, fraudulent, or misleading:

- 1 (i) representation;
2 (ii) notice; or
3 (iii) advertisement;
- 4 (2) provide false information;
- 5 (3) make a false promise or representation relating to
6 employment;
- 7 (4) divide fees with or receive compensation from:
- 8 (A) a person exempt from registration under this
9 chapter under Section 2051.005; [~~or~~]
- 10 (B) a professional sports league or franchise,
11 including a representative or employee of the league or franchise;
12 or
- 13 (C) an institution of higher education,
14 including a representative or employee of the institution's
15 athletics department;
- 16 (5) enter into a written or oral agreement with an
17 employee of an institution of higher education in which the athlete
18 agent offers a thing of value to the employee for the referral of
19 clients by the employee;
- 20 (6) before an athlete completes the athlete's last
21 intercollegiate sports contest, offer a thing of value to the
22 athlete or an individual related to the athlete within the second
23 degree by affinity or consanguinity to induce the athlete to enter
24 into an agreement with the athlete agent in which the athlete agent
25 will represent the athlete;
- 26 (7) before an athlete completes the athlete's last
27 intercollegiate sports contest, furnish a thing of value to the

1 athlete or an individual related to the athlete within the second
2 degree by affinity or consanguinity;

3 (8) [~~(7)~~] except as provided by this chapter, before
4 an athlete completes the athlete's last intercollegiate sports
5 contest:

6 (A) directly contact the athlete; or

7 (B) enter into an oral or written agreement with
8 the athlete for the athlete agent to represent the athlete;

9 (9) [~~(8)~~] furnish anything of value to any person
10 other than the athlete or another registered athlete agent to
11 induce an athlete to enter into an agreement with the athlete agent;

12 (10) [~~(9)~~] initiate any contact with an athlete,
13 except as authorized by this chapter;

14 (11) [~~(10)~~] fail to retain or permit inspection of the
15 records required to be retained by Section 2051.352;

16 (12) [~~(11)~~] predate or postdate an agent contract;
17 [~~(10)~~]

18 (13) [~~(12)~~] fail to notify an athlete before the
19 athlete signs an agent contract that the signing may make the
20 athlete ineligible to participate in intercollegiate sports; or

21 (14) commit an act or cause a person to commit an act
22 on the athlete agent's behalf that causes an athlete to violate a
23 rule of the national association for the promotion and regulation
24 of intercollegiate athletics of which the athlete's institution of
25 higher education is a member.

26 SECTION 11. Section 2051.451(b), Occupations Code, is
27 amended to read as follows:

1 (b) The secretary shall determine the amount of a penalty
2 assessed under Subsection (a), except that the amount may not
3 exceed:

4 (1) \$50,000 for a violation of Section 2051.351(a)(7)
5 or (14); or

6 (2) \$25,000 for any other violation.

7 SECTION 12. Subchapter J, Chapter 2051, Occupations Code,
8 is amended by adding Section 2051.457 to read as follows:

9 Sec. 2051.457. FAILURE TO PAY ADMINISTRATIVE PENALTY. (a)
10 If an athlete agent fails to pay the administrative penalty and does
11 not request a hearing as provided by Section 2051.453, the
12 secretary of state may revoke the agent's certificate of
13 registration, refuse to renew the agent's certificate of
14 registration, or refuse to issue a certificate of registration to
15 the agent.

16 (b) If, after a hearing, an athlete agent fails to pay the
17 administrative penalty as required by Section 2051.454, the
18 secretary of state may revoke the agent's certificate of
19 registration, refuse to renew the agent's certificate of
20 registration, or refuse to issue a certificate of registration to
21 the agent.

22 SECTION 13. Section 2051.501, Occupations Code, is amended
23 by amending Subsection (b) and adding Subsection (c) to read as
24 follows:

25 (b) Except as provided by Subsection (c), an [An] offense
26 under this section is a Class A misdemeanor.

27 (c) An offense under this section committed by an athlete

1 agent who intentionally or knowingly violates Section
2 2051.351(a)(7) or (14) is a third degree felony.

3 SECTION 14. Subchapter K, Chapter 2051, Occupations Code,
4 is amended by adding Section 2051.502 to read as follows:

5 Sec. 2051.502. NOTICE OF CRIMINAL OFFENSE. The secretary
6 of state shall send notice of an athlete agent's conviction of an
7 offense under Section 2051.501 to each national professional sports
8 association that has certified the agent.

9 SECTION 15. The heading to Subchapter L, Chapter 2051,
10 Occupations Code, is amended to read as follows:

11 SUBCHAPTER L. CIVIL LIABILITY [~~SUIT BY INSTITUTION OF HIGHER~~
12 ~~EDUCATION~~]

13 SECTION 16. Section 2051.551, Occupations Code, is amended
14 by amending Subsections (a), (b), and (c) and adding Subsection
15 (a-1) to read as follows:

16 (a) An institution of higher education adversely affected
17 by an athlete agent's [~~or former athlete's~~] violation of this
18 chapter may file suit against the athlete agent [~~or former athlete~~]
19 for damages.

20 (a-1) An athlete adversely affected by an athlete agent's
21 violation of Section 2051.351(a)(7) or (14) may file suit against
22 the athlete agent for damages.

23 (b) A cause of action under Subsection (a) [~~this section~~]
24 does not accrue until the educational institution discovers or by
25 the exercise of reasonable diligence would have discovered the
26 violation by the athlete agent [~~or former athlete~~].

27 (c) Any liability of the athlete agent [~~or the former~~

1 ~~athlete~~] under this section is several and not joint.

2 SECTION 17. Section 2051.552, Occupations Code, is amended
3 to read as follows:

4 Sec. 2051.552. ADVERSELY AFFECTED. (a) An institution of
5 higher education is adversely affected by an athlete agent's
6 violation of this chapter if:

7 (1) the athlete agent's violation causes a national
8 association for the promotion and regulation of intercollegiate
9 athletics to disqualify or suspend the institution from
10 participating in intercollegiate sports contests; and

11 (2) the disqualification or suspension of the
12 institution causes the institution to:

13 (A) lose revenue from media coverage of sports
14 contests;

15 (B) lose the right to grant athletic scholarships
16 in the sport in which the institution is disqualified or suspended;

17 (C) lose the right to recruit athletes; or

18 (D) otherwise suffer an adverse financial
19 impact.

20 (b) An athlete is adversely affected by an athlete agent's
21 violation of Section 2051.351(a)(7) or (14) if:

22 (1) the athlete agent's violation causes a national
23 association for the promotion and regulation of intercollegiate
24 athletics to disqualify or suspend the athlete from participating
25 in intercollegiate sports contests; and

26 (2) the disqualification or suspension of the athlete
27 causes the athlete to suffer an adverse financial impact.

1 SECTION 18. Section 2051.553, Occupations Code, is amended
2 to read as follows:

3 Sec. 2051.553. RECOVERY. A plaintiff [~~An institution of~~
4 ~~higher education~~] that prevails in a civil suit filed under Section
5 2051.551 may recover:

- 6 (1) actual damages;
- 7 (2) exemplary damages;
- 8 (3) court costs; and
- 9 (4) reasonable attorney's fees.

10 SECTION 19. The following sections of the Occupations Code
11 are repealed:

- 12 (1) Section 2051.103;
- 13 (2) Section 2051.104; and
- 14 (3) Section 2051.153.

15 SECTION 20. (a) A registration under Chapter 2051,
16 Occupations Code, in effect on the effective date of this Act
17 continues in effect under the former law until it expires or is
18 revoked, and the former law is continued in effect for that purpose.

19 (b) An individual who submits an application required by
20 Chapter 2051, Occupations Code, that is pending on the effective
21 date of this Act must resubmit an application as required by Chapter
22 2051, Occupations Code, as amended by this Act.

23 (c) The change in law made by this Act applies only to an
24 offense committed on or after the effective date of this Act. An
25 offense committed before the effective date of this Act is governed
26 by the law in effect on the date the offense was committed, and the
27 former law is continued in effect for that purpose. For purposes of

1 this section, an offense was committed before the effective date of
2 this Act if any element of the offense occurred before that date.

3 (d) Not later than January 1, 2012, the secretary of state
4 shall:

5 (1) by letter notify each institution of higher
6 education that would have received a copy of compliance
7 responsibilities by mail from the secretary under former Section
8 2051.052, Occupations Code, of the changes in law made by this Act;
9 and

10 (2) post on the secretary's Internet website the
11 compliance responsibilities of institutions of higher education
12 under Chapter 2051, Occupations Code, as required by Section
13 2051.052, Occupations Code, as amended by this Act.

14 SECTION 21. This Act takes effect September 1, 2011.

ADOPTED

LUCIO
~~Roger W. A.~~

COMMITTEE AMENDMENT NO. 1 MAY 16 2011 BY: _____

Atay Saw
Secretary of the Senate

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Amend H.B. 1123 (House Engrossed) as follows:

(1) On page 4, lines 8-10, strike the following:

"an arrest for a crime that in this state is an offense other than a Class C misdemeanor;"

(2) On page 4, lines 13-20, reletter the paragraphs of Section 2051(b)(3), Occupations Code, accordingly.

(3) On page 7, line 10, strike "arrest for" and substitute "conviction of".

(4) On page 7, line 17, strike "the arrest" and substitute "conviction.".

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 16, 2011

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB1123 by Dutton (Relating to the regulation of athlete agents; providing administrative and criminal penalties.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would require the Secretary of State (SOS) to publish on SOS's website the information that prescribes the compliance responsibilities of an institution of higher education pertaining to athlete agents (agent) and would require SOS to notify the athletic director or other appropriate official of any changes to the compliance responsibilities.

The bill would require a registered agent to be certified as an agent by a national professional sports association (NPSA) unless a sport does not have an NPSA.

An applicant for registration or renewal as an agent would be required to provide certain information on a form prescribed by SOS.

An agent, before contracting an athlete or entering into an agent contract with an athlete in Texas, would be required to deposit with SOS a surety bond in the amount of \$50,000 payable to the state and conditioned on certain criteria.

SOS would be required, to the extent practicable, to have the form for an agent contract or financial services contract conform to the contract form approved by the NPSA for the sport the athlete would represent.

The bill would prohibit an agent from furnishing a thing of value to an athlete or certain individuals related to the athlete before completing the athlete's last intercollegiate sports contest and would prohibit an agent from committing certain acts that would cause an athlete to violate certain rules and regulations. SOS would be required to assess an administrative penalty, not to exceed \$50,000, if this is violated. The bill would also make these offenses a third degree felony.

SOS would be required to send notice of an athlete agent's conviction of certain offenses to each NPSA that has certified the agent.

The bill would repeal the following sections of the Occupations Code: Section 2051.103 related to effect of personal service contract, Section 2051.004 related to athlete agent contract, and Section 2051.153 related to exempting agents who enter into only an agent contract with an athlete from certain bond requirements.

The change in law made by this bill would only apply to an offense committed on or after the effective date of the bill.

SOS would be required to notify each institute of higher education of the changes in the athlete agent statute and post on SOS's website the compliance responsibilities by January 1, 2012.

The bill would take effect on September 1, 2011.

According to SOS, there were 80 registered agents on February 1, 2011 and most of the agents are currently certified by one or more NPSAs. SOS assumes that there may be a small decrease in the number of agents due to the increase in liability insurance.

It is assumed that the costs associated with modifications to existing SOS system applications, revisions to forms, rules, and publications, and notifications to each NPSA of agent convictions could be absorbed within existing resources.

It is not known how many administrative penalties and criminal offenses would occur, but it is assumed that there would be no significant fiscal implication.

It is anticipated that any additional costs associated with implementation of the legislation could be absorbed within existing resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 307 Secretary of State

LBB Staff: JOB, SD, AG, BTA

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 11, 2011

TO: Honorable John Carona, Chair, Senate Committee on Business & Commerce

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB1123 by Dutton (Relating to the regulation of athlete agents; providing administrative and criminal penalties.), **Committee Report 2nd House, As Amended**

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LBB Staff: JOB, AG, BTA

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

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The bill would prohibit an agent from furnishing a thing of value to an athlete or certain individuals related to the athlete before completing the athlete's last intercollegiate sports contest and would prohibit an agent from committing certain acts that would cause an athlete to violate certain rules and regulations. SOS would be required to assess an administrative penalty, not to exceed \$50,000, if this is violated. The bill would also make these offenses a third degree felony.

SOS would be required to send notice of an athlete agent's conviction of certain offenses to each NPSA that has certified the agent.

The bill would repeal the following sections of the Occupations Code: Section 2051.103 related to effect of personal service contract, Section 2051.004 related to athlete agent contract, and Section 2051.153 related to exempting agents who enter into only an agent contract with an athlete from certain bond requirements.

The change in law made by this bill would only apply to an offense committed on or after the effective date of the bill.

SOS would be required to notify each institute of higher education of the changes in the athlete agent statute and post on SOS's website the compliance responsibilities by January 1, 2012.

The bill would take effect on September 1, 2011.

According to SOS, there were 80 registered agents on February 1, 2011 and most of the agents are currently certified by one or more NPSAs. SOS assumes that there may be a small decrease in the number of agents due to the increase in liability insurance.

It is assumed that the costs associated with modifications to existing SOS system applications, revisions to forms, rules, and publications, and notifications to each NPSA of agent convictions could be absorbed within existing resources.

It is not known how many administrative penalties and criminal offenses would occur, but it is assumed that there would be no significant fiscal implication.

It is anticipated that any additional costs associated with implementation of the legislation could be absorbed within existing resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 307 Secretary of State

LBB Staff: JOB, AG, BTA

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

April 7, 2011

TO: Honorable Mike Hamilton, Chair, House Committee on Licensing & Administrative Procedures

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB1123 by Dutton (Relating to the regulation of athlete agents; providing administrative and criminal penalties.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would require the Secretary of State (SOS) to publish on SOS's website the information that prescribes the compliance responsibilities of an institution of higher education pertaining to athlete agents (agent) and would require SOS to notify the athletic director or other appropriate official of any changes to the compliance responsibilities.

The bill would require a registered agent to be certified as an agent by a national professional sports association (NPSA) unless a sport does not have an NPSA.

An applicant for registration or renewal as an agent would be required to provide certain information on a form prescribed by SOS.

An agent, before contracting an athlete or entering into an agent contract with an athlete in Texas, would be required to deposit with SOS a surety bond in the amount of \$50,000 payable to the state and conditioned on certain criteria.

SOS would be required, to the extent practicable, to have the form for an agent contract or financial services contract conform to the contract form approved by the NPSA for the sport the athlete would represent.

The bill would prohibit an agent from furnishing a thing of value to an athlete or certain individuals related to the athlete before completing the athlete's last intercollegiate sports contest and would prohibit an agent from committing certain acts that would cause an athlete to violate certain rules and regulations. SOS would be required to assess an administrative penalty, not to exceed \$50,000, if this is violated. The bill would also make these offenses a third degree felony.

SOS would be required to send notice of an athlete agent's conviction of certain offenses to each NPSA that has certified the agent.

The bill would repeal the following sections of the Occupations Code: Section 2051.103 related to effect of personal service contract, Section 2051.004 related to athlete agent contract, and Section 2051.153 related to exempting agents who enter into only an agent contract with an athlete from certain bond requirements.

The change in law made by this bill would only apply to an offense committed on or after the effective date of the bill.

SOS would be required to notify each institute of higher education of the changes in the athlete agent statute and post on SOS's website the compliance responsibilities by January 1, 2012.

The bill would take effect on September 1, 2011.

According to SOS, there were 80 registered agents on February 1, 2011 and most of the agents are currently certified by one or more NPSAs. SOS assumes that there may be a small decrease in the number of agents due to the increase in liability insurance.

It is assumed that the costs associated with modifications to existing SOS system applications, revisions to forms, rules, and publications, and notifications to each NPSA of agent convictions could be absorbed within existing resources.

It is not known how many administrative penalties and criminal offenses would occur, but it is assumed that there would be no significant fiscal implication.

It is anticipated that any additional costs associated with implementation of the legislation could be absorbed within existing resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 307 Secretary of State

LBB Staff: JOB, AG, BTA

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

March 28, 2011

TO: Honorable Mike Hamilton, Chair, House Committee on Licensing & Administrative Procedures

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB1123 by Dutton (Relating to the regulation of athlete agents; providing administrative and criminal penalties.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would require a registered athlete agent (agent) to first be certified as an agent by a national professional sports association (NPSA).

An applicant for registration or renewal as an agent would be required to provide the name and address of each NPSA that has certified the applicant as an agent on a form prescribed by the Secretary of State (SOS).

An agent, before contracting an athlete or entering into an agent contract with an athlete in Texas, would be required to deposit with SOS a surety bond in the amount of \$50,000 payable to the state and conditioned on certain criteria.

The bill would prohibit an agent from furnishing a thing of value to an athlete before the athlete completes the athlete's last intercollegiate sports contest and would allow SOS to assess an administrative penalty, not to exceed \$50,000, if this is violated. The bill would also make this offense a third degree felony.

SOS would be required to send notice of an athlete agent's conviction of certain offenses to each NPSA that has certified the agent.

The bill would repeal Section 2051.153 of the Occupations Code related to exempting agents, who enter into only an agent contract with an athlete, from certain bond requirements.

The change in law made by this bill would only apply to an offense committed on or after the effective date of the bill.

The bill would take effect on September 1, 2011.

According to SOS, there were 80 registered agents on February 1, 2011 and most of the agents are currently certified by one or more NPSAs. SOS assumes that there may be a small decrease in the number of agents due to the increase in liability insurance and since agents for collegiate sports that do not have a certifying NPSA would no longer be allowed to register.

It is assumed that the costs associated with modifications to existing SOS system applications, revisions to forms, rules, and publications, and notifications to each NPSA of agent convictions could be absorbed within existing resources.

It is not known how many administrative penalties and criminal offenses would occur, but it is assumed that there would be no significant fiscal implication.

It is anticipated that any additional costs associated with implementation of the legislation could be absorbed within existing resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts, 307 Secretary of State

LBB Staff: JOB, AG, MS, BTA

LEGISLATIVE BUDGET BOARD

Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

82ND LEGISLATIVE REGULAR SESSION

May 11, 2011

TO: Honorable John Carona, Chair, Senate Committee on Business & Commerce

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB1123 by Dutton (Relating to the regulation of athlete agents; providing administrative and criminal penalties.), **Committee Report 2nd House, As Amended**

The provisions of the bill that are the subject of this analysis are the provisions that would deal with criminal sanctions for athlete agents. The bill would amend the Occupations Code to enhance the punishment prescribed to an athlete agent who commits a criminal offense, from a Class A Misdemeanor to a third degree felony, if the offense involves furnishing a thing of value to an athlete or certain related individuals before the athlete completes the last intercollegiate sports contest, or committing or causing to commit an act that causes an athlete to violate certain athletics rules.

A Class A Misdemeanor is punishable by confinement in county jail for a term not to exceed one year and/or a fine not to exceed \$4,000. A felony of the third degree is punishable by confinement in prison for a term from 2 to 10 years and, in addition to confinement, an optional fine not to exceed \$10,000.

Expanding the list of behaviors for which a penalty is applied for any criminal offense is expected to result in increased demands upon the correctional resources of counties or of the State due to longer terms of probation, or longer terms of confinement in county jails or prison. When an offense is changed from a misdemeanor to a felony, there is a transfer of the burden of confinement of convicted offenders from the counties to the State. In the case of this bill, the impact on correctional populations would depend on how many persons would be prosecuted under the provisions of the bill, and the extent to which punishment would be enhanced under the proposed statute compared to existing statute. In fiscal year 2010, less than 5 individuals were arrested, and less than 5 were placed under misdemeanor community supervision for a criminal offense relating to athlete agents' regulations. For this analysis, it is assumed the number of offenders convicted under this statute would not result in a significant impact on the programs and workload of State corrections agencies or on the demand for resources and services of those agencies.

Source Agencies:

LBB Staff: JOB, LM, GG, ADM

LEGISLATIVE BUDGET BOARD

Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

82ND LEGISLATIVE REGULAR SESSION

April 8, 2011

TO: Honorable Mike Hamilton, Chair, House Committee on Licensing & Administrative Procedures

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB1123 by Dutton (Relating to the regulation of athlete agents; providing administrative and criminal penalties.), **Committee Report 1st House, Substituted**

The provisions of the bill that are the subject of this analysis are the provisions that would deal with criminal sanctions for athlete agents. The bill would amend the Occupations Code to enhance the punishment prescribed to an athlete agent who commits a criminal offense, from a Class A Misdemeanor to a third degree felony, if the offense involves furnishing a thing of value to an athlete or certain related individuals before the athlete completes the last intercollegiate sports contest, or committing or causing to commit an act that causes an athlete to violate certain athletics rules.

A Class A Misdemeanor is punishable by confinement in county jail for a term not to exceed one year and/or a fine not to exceed \$4,000. A felony of the third degree is punishable by confinement in prison for a term from 2 to 10 years and, in addition to confinement, an optional fine not to exceed \$10,000.

Expanding the list of behaviors for which a penalty is applied for any criminal offense is expected to result in increased demands upon the correctional resources of counties or of the State due to longer terms of probation, or longer terms of confinement in county jails or prison. When an offense is changed from a misdemeanor to a felony, there is a transfer of the burden of confinement of convicted offenders from the counties to the State. In the case of this bill, the impact on correctional populations would depend on how many persons would be prosecuted under the provisions of the bill, and the extent to which punishment would be enhanced under the proposed statute compared to existing statute. In fiscal year 2010, less than 5 individuals were arrested, and less than 5 were placed under misdemeanor community supervision for a criminal offense relating to athlete agents' regulations. For this analysis, it is assumed the number of offenders convicted under this statute would not result in a significant impact on the programs and workload of State corrections agencies or on the demand for resources and services of those agencies.

Source Agencies:

LBB Staff: JOB, GG, ADM

LEGISLATIVE BUDGET BOARD

Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

82ND LEGISLATIVE REGULAR SESSION

March 28, 2011

TO: Honorable Mike Hamilton, Chair, House Committee on Licensing & Administrative Procedures

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB1123 by Dutton (Relating to the regulation of athlete agents; providing administrative and criminal penalties.), **As Introduced**

The provisions of the bill that are the subject of this analysis are the provisions that would deal with criminal sanctions for athlete agents. The bill would amend the Occupations Code by prohibiting athlete agents to furnish things of value to athletes before completing the last intercollegiate sports contest; providing criminal penalties. The bill would enhance the punishment prescribed to an athlete agent who commits a criminal offense, from a Class A Misdemeanor to a third degree felony, if the offense involves furnishing a thing of value to an athlete before the athlete completes the last intercollegiate sports contest.

A Class A Misdemeanor is punishable by confinement in county jail for a term not to exceed one year and/or a fine not to exceed \$4,000. A felony of the third degree is punishable by confinement in prison for a term from 2 to 10 years and, in addition to confinement, an optional fine not to exceed \$10,000.

Expanding the list of behaviors for which a penalty is applied for any criminal offense is expected to result in increased demands upon the correctional resources of counties or of the State due to longer terms of probation, or longer terms of confinement in county jails or prison. When an offense is changed from a misdemeanor to a felony, there is a transfer of the burden of confinement of convicted offenders from the counties to the State. In the case of this bill, the impact on correctional populations would depend on how many persons would be prosecuted under the provisions of the bill, and the extent to which punishment would be enhanced under the proposed statute compared to existing statute. In fiscal year 2010, less than 5 individuals were arrested, and less than 5 were placed under misdemeanor community supervision for a criminal offense relating to athlete agents' regulations. For this analysis, it is assumed the number of offenders convicted under this statute would not result in a significant impact on the programs and workload of State corrections agencies or on the demand for resources and services of those agencies.

Source Agencies:

LBB Staff: JOB, GG, LM, ADM