H.R. REP. 107-725, H.R. Rep. No. 725, 107TH Cong., 2ND Sess. 2002, 2002 WL 31255770 (Leg.Hist.)

**\*1** SPORTS AGENT RESPONSIBILITY AND TRUST ACT

HOUSE REPORT NO. 107–725

October 7, 2002

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

REPORT

[To accompany H.R. 4701]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 4701) 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 an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**\*2** SECTION 1. SHORT TITLE.

This Act may be cited as the “Sports Agent Responsibility and Trust Act”.

SEC. 2. DEFINITIONS.

As used in this Act, the following definitions apply:

(1) Agency contract.–The term “agency contract” means an oral or written agreement in which a student athlete authorizes a person to negotiate or solicit on behalf of the student athlete a professional sports contract or an endorsement contract.

(2) Athlete agent.–The term “athlete agent” means an individual who enters into an agency contract with a student athlete, or directly or indirectly recruits or solicits a student athlete to enter into an agency contract, and does not include a spouse, parent, sibling, grandparent, or guardian of such student athlete, or an individual acting solely on behalf of a professional sports team or professional sports organization.

(3) Athletic director.–The term “athletic director” means an individual responsible for administering the athletic program of an educational institution or, in the case that such program is administered separately, the athletic program for male students or the athletic program for female students, as appropriate.

(4) Commission.–The term “Commission” means the Federal Trade Commission.

(5) Endorsement contract.–The term “endorsement contract” means an agreement under which a student athlete is employed or receives consideration for the use by the other party of that individual's person, name, image, or likeness in the promotion of any product, service, or event.

(6) Intercollegiate sport.–The term “intercollegiate sport” means a sport played at the collegiate level for which eligibility requirements for participation by a student athlete are established by a national association for the promotion or regulation of college athletics.

(7) Professional sports contract.–The term “professional sports contract” means an agreement under 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.

(8) State.–The term “State” includes a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(9) Student athlete.–The term “student athlete” means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport. An individual who is permanently ineligible to participate in a particular intercollegiate sport is not a student athlete for purposes of that sport.

SEC. 3. REGULATION OF UNFAIR AND DECEPTIVE ACTS AND PRACTICES IN CONNECTION WITH THE CONTACT BETWEEN AN ATHLETE AGENT AND A STUDENT ATHLETE.

(a) Conduct Prohibited.–It is unlawful for an athlete agent to–

(1) directly or indirectly recruit or solicit a student athlete to enter into an agency contract, by–

(A) giving any false or misleading information or making a false promise or representation; or

(B) providing anything of value to a student athlete or anyone associated with the student athlete before the student athlete enters into an agency contract;

(2) enter into an agency contract with a student athlete without providing the student athlete with the disclosure document described in subsection (b); or

(3) predate or postdate an agency contract.

(b) Required Disclosure by Athlete Agents to Student Athletes.–

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

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

(3) Required language.–The disclosure document must contain, in close proximity to the signature of the student athlete, or, if the student athlete is under the age of 18, the signature of such student athlete's parent or legal **\*3** guardian, a conspicuous notice in boldface type stating: “Warning to Student Athlete: If you agree orally or in writing to be represented by an agent now or in the future you may lose your eligibility to compete as a student athlete in your sport. Within 72 hours after entering into this contract or before the next athletic event in which you are eligible to participate, whichever occurs first, both you and the agent by whom you are agreeing to be represented must notify the athletic director of the educational institution at which you are enrolled, or other individual responsible for athletic programs at such educational institution, that you have entered into an agency contract.”.

SEC. 4. ENFORCEMENT.

(a) Unfair or Deceptive Act or Practice.–A violation of this Act shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(b) Actions by the Commission.–The Commission shall enforce this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act.

SEC. 5. ACTIONS BY STATES.

(a) In General.–

(1) Civil actions.–In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any athlete agent in a practice that violates section 3 of this Act, the State may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to–

(A) enjoin that practice;

(B) enforce compliance with this Act;

(C) obtain damage, restitution, or other compensation on behalf of residents of the State; or

(D) obtain such other relief as the court may consider to be appropriate.

(2) Notice.–

(A) In general.–Before filing an action under paragraph (1), the attorney general of the State involved shall provide to the Commission–

(i) written notice of that action; and

(ii) a copy of the complaint for that action.

(B) Exemption.–Subparagraph (A) shall not apply with respect to the filing of an action by an attorney general of a State under this subsection, if the attorney general determines that it is not feasible to provide the notice described in that subparagraph before filing of the action. In such case, the attorney general of a State shall provide notice and a copy of the complaint to the Commission at the same time as the attorney general files the action.

(b) Intervention.–

(1) In general.–On receiving notice under subsection (a)(2), the Commission shall have the right to intervene in the action that is the subject of the notice.

(2) Effect of intervention.–If the Commission intervenes in an action under subsection (a), it shall have the right–

(A) to be heard with respect to any matter that arises in that action; and

(B) to file a petition for appeal.

(c) Construction.–For purposes of bringing any civil action under subsection (a), nothing in this title shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to–

(1) conduct investigations;

(2) administer oaths or affirmations; or

(3) compel the attendance of witnesses or the production of documentary and other evidence.

(d) Actions by the Commission.–In any case in which an action is instituted by or on behalf of the Commission for a violation of section 3, no State may, during the pendency of that action, institute an action under subsection (a) against any defendant named in the complaint in that action–

(e) Venue.–Any action brought under subsection (a) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

(f) Service of Process.–In an action brought under subsection (a), process may be served in any district in which the defendant–

**\*4** (1) is an inhabitant; or

(2) may be found.

SEC. 6. PROTECTION OF EDUCATIONAL INSTITUTION.

(a) Notice Required.–Within 72 hours after entering into an agency contract or before the next athletic event in which the student athlete may participate, whichever occurs first, the athlete agent and the student athlete shall each inform the athletic director of the educational institution at which the student athlete is enrolled, or other individual responsible for athletic programs at such educational institution, that the student athlete has entered into an agency contract, and the athlete agent shall provide the athletic director with notice in writing of such a contract.

(b) Civil Remedy.–

(1) In general.–An educational institution has a right of action against an athlete agent for damages caused by a violation of this Act.

(2) Damages.–Damages of an educational institution may include losses and expenses incurred because, as a result of the conduct of the athlete agent, the educational institution was injured by a violation of this Act or was penalized, disqualified, or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by reasonable self-imposed disciplinary action taken to mitigate actions likely to be imposed by such an association or conference.

(3) Costs and attorneys fees.–In an action taken under this section, the court may award to the prevailing party costs and reasonable attorneys fees.

(4) Effect on other rights, remedies and defenses.–This section does not restrict the rights, remedies, or defenses of any person under law or equity.

SEC. 7. SENSE OF CONGRESS.

It is the sense of Congress that States should enact the Uniform Athlete Agents Act of 2000 drafted by the National Conference of Commissioners on Uniform State Laws, to protect student athletes and the integrity of amateur sports from unscrupulous sports agents. In particular, it is the sense of Congress that States should enact the provisions relating to the registration of sports agents, the required form of contract, the right of the student athlete to cancel an agency contract, the disclosure requirements relating to record maintenance, reporting, renewal, notice, warning, and security, and the provisions for reciprocity among the States.

PURPOSE AND SUMMARY

The purpose of H.R. 4701 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. 4701 provides 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 **\*5** 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 black-mailed 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 degrees 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. 4701 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 Subcommittee on Commerce, Trade, and Consumer Protection held a hearing on H.R. 4701 on June 5, 2002. The Subcommittee received testimony from: The Honorable Tom Osborne, U.S. House of Representatives; Mr. Howard Beales, Director, Bureau of Consumer Protection, Federal Trade Commission; Mr. James Donnelly, Athletic Director, Middle Tennessee State University; and Mr. Bill Saum, Director of Agent, Gambling, and Amateurism Activities, National Collegiate Athletic Association.

COMMITTEE CONSIDERATION

On Wednesday, July 17, 2002, the Subcommittee on Commerce, Trade, and Consumer Protection met in open markup session and approved H.R. 4701, as amended, for Full Committee consideration, by a voice vote, a quorum being present. On Wednesday, September 25, 2002, the Full Committee met in open markup session and ordered H.R. 4701 favorably reported to the House, as amended, 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 **\*6** to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 4701 reported. A motion by Mr. Tauzin to order H.R. 4701 reported to the House, as amended, 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 held a legislative hearing and made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal of H.R. 4701 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. 4701, 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, October 4, 2002.

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. 4701, 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), Angela Seitz (for the state and local impact), and Paige Piper/Bach (for the private-sector impact).

Sincerely,

Barry B. Anderson

(For Dan L. Crippen, Director).

Enclosure.

**\*7** H.R. 4701–Sports Agent Responsibility and Trust Act

H.R. 4701 would impose certain restrictions on contracts between sports agents and student athletes. For example, the bill would prohibit sports agents from making false promises or offering gifts to solicit such a contract. 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. 4701 would not have a significant impact on the federal budget. Based on information from the FTC, CBO expects that enforcing H.R. 4701 would take place mostly at the state level. Therefore, CBO expects that any increase in civil penalties resulting from the enactment of H.R. 4701 would be insignificant. (Such penalties are recorded in the budget as revenues.) Similarly, we estimate that implementing H.R. 4701 would increase the FTC's costs by less than $500,000 annually, assuming the availability of appropriations.

H.R. 4701 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. 4701 would impose private-sector mandates, as defined by UMRA, on certain sports agents and student athletes. CBO estimates that the direct costs of the mandates would fall well below the annual threshold established by UMRA for private-sector mandates ($115 million in 2002, adjusted annually for inflation).

In general, H.R. 4701 would prohibit sports agents from recruiting or soliciting a student athlete by giving any false or misleading information or making a false promise or representation. H.R. 4701 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 also 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 that the athlete has entered into an agency contract. Based on information from government sources, CBO estimates that the direct cost of the mandates would fall well below the annual threshold established by UMRA for private-sector mandates.

The CBO staff contacts for this estimate are Ken Johnson (for federal costs), Angela Seitz (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.

**\*8** 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 of 2002.”

Section 2. Definitions

Section 2 provides definitions for terms incorporated throughout H.R. 4701.

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 **\*9** 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.

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