



Protection of Student-Athletes' Rights in the Professional Marketplace: 1993 Illinois House Bill 618

Brian K. Kozminski

Follow this and additional works at: <https://via.library.depaul.edu/jatip>

Recommended Citation

Brian K. Kozminski, *Protection of Student-Athletes' Rights in the Professional Marketplace: 1993 Illinois House Bill 618*, 4 DePaul J. Art, Tech. & Intell. Prop. L. 97 (1993)

Available at: <https://via.library.depaul.edu/jatip/vol4/iss1/7>

This Legislative Updates is brought to you for free and open access by the College of Law at Via Sapientiae. It has been accepted for inclusion in DePaul Journal of Art, Technology & Intellectual Property Law by an authorized editor of Via Sapientiae. For more information, please contact digitalservices@depaul.edu.

Protection of Student-Athletes' Rights in the Professional Marketplace:

1993 Illinois House Bill 618

I. INTRODUCTION

Professional sports have become increasingly popular in the United States in recent years. With the advent of cable television, media coverage of sporting events has expanded significantly. Advertising has made a number of professional athletes household figures. Clothing and other products officially endorsed by the professional leagues are in high demand, even at high prices. In short, the revenue a professional sports team collects has increased substantially.¹ The athletes generally feel they are entitled to a piece of the financial pie and apparently, the athletes are receiving it. Recently, Duke University point guard Bobby Hurley signed a contract to play for the Sacramento Kings of the National Basketball Association (NBA) for \$16,500,000.00 over six years.² At the same time, Jamal Mashburn of the University of Kentucky was still negotiating with the Dallas Mavericks. Mashburn eventually signed a contract to play for \$34,800,000.00 over eight years.³ Most recently, Chris Webber of the University of Michigan signed a contract to play for the Golden State Warriors for \$74,400,000.00 over fifteen years.⁴

Sports agents⁵ are a relatively recent phenomenon.⁶ Today, many professional athletes are represented by an agent.⁷ A competent agent can, among other things, draft and negotiate a contract for an athlete, plan financial endeavors, arrange for endorsements, and interpret collective bargaining agreements.⁸ Unfortunately, not all agents perform these tasks skillfully or in accordance with the law. The professional sports leagues and the National Collegiate Athletic

1. See Michael S. Jacobs, *Professional Sports Leagues, Antitrust, and the Single-Entity Theory: A Defense of the Status Quo*, 67 Ind. L.J. 25, 25 (1991).

2. Mike Hamilton, *Morning News Roundup*, DALLAS MORNING NEWS, Sept. 16, 1993 at 2B.

3. Kevin B. Blackstone, *As for Athletes' Huge Salaries, That's Entertainment*, DALLAS MORNING NEWS, Oct. 21, 1993, at 2B.

4. Sam Smith, *Money Madness: A Search for Logic in those Crazy NBA Contracts*, CHI. TRIB., Oct. 22, 1993, § 3, at 1.

5. Unless stated otherwise, in this article, a "sports agent" is defined as one who contracts with an athlete to act as his agent in negotiating an employment contract and otherwise planning his financial endeavors. This article, and Illinois H.B. 618, primarily comments upon sports agents who seek to represent student athletes entering the professional leagues.

6. Curtis D. Rypma, Note, *Sports Agents Representing Athletes: The Need for Comprehensive State Legislation*, 24 VAL. U. L. REV. 481, 481 (1990).

7. See *Id.*

8. *Id.*

Association (NCAA) have enacted rules to prevent abuse in the industry. In numerous instances these rules have proven inadequate. A Bill recently introduced in Illinois would theoretically prevent many of the abuses that occur in the sports agent business.⁹

This update will generally explain the sports agent/student athlete relationship and how abuses in the industry come about. Collegiate, professional, and federal sports agent legislation will be noted. Finally, the proposed Illinois Bill will be outlined in detail and its merits considered. This update concludes that enacting 1993 Illinois House Bill 618 would be an important step toward effective regulation of sports agents.

II. BACKGROUND

A. *The National Collegiate Athletic Association*

The NCAA, a private, voluntary organization comprised of approximately 960 colleges and universities,¹⁰ is the recognized rulemaking body for college athletics. The NCAA regulates, among other things, eligibility of student athletes to play intercollegiate sports at member institutions.¹¹ Under the NCAA rules, a student generally may play intercollegiate sports for four years.¹² However, NCAA rules state a player loses his eligibility to continue playing college sports if he contracts, orally or in writing, to be represented by an agent.¹³ This remains true even if the agent is officially not to begin acting on the athlete's behalf until after the player is finished with his college eligibility.¹⁴ A player who accepts money or gifts also violates NCAA eligibility rules.¹⁵ However, the NCAA rules prohibiting agent contact only address students with remaining eligibility.¹⁶ Therefore, a student may have classroom work left toward obtaining a degree and still obtain the services of an agent if his eligibility has expired. Existing judicial decisions recognize the legitimacy of the NCAA's eligibility rules.¹⁷ In practice, the NCAA rules create an artificial barrier between the amateur market structure of college sports and the high-pay market structure of professional sports.¹⁸ Significantly, the NCAA rules only affect institutions of

9. 1993 Ill. H.B. 618.

10. Landis Cox, Note, *Targeting Sports Agents with the Mail Fraud Statute: United States v. Norby Walters & Lloyd Bloom*, 41 DUKE L.J. 1157, 1158 (1992).

11. See Gary P. Konn, *Sports Agents Representing Professional Athletes; Being Certified Means Never Having to Say You're Qualified*, 6 ENT. AND SPORTS LAW 1, 6 (1988).

12. Derek Quinn Johnson, Note, *Educating Misguided Student Athletes: An Application of Contract Theory*, 85 COLUM. L. REV. 96, 114 (1985).

13. Cox, *supra* note 10, at 1158 (citing NCAA Const. art. 3 § 1-(c)).

14. *Id.* at 1158.

15. *Id.* at 1158 (citing NCAA Const. Art. 3 § 1-(a)-(3) and NCAA Const. Art. 3 § 1-(g)-(5)).

16. *Id.* at 1162 (citing NCAA Const. Art. 3 § 1-(c)).

17. *Id.* at 1166 (citing NCAA v. Board of Regents, 468 U.S. 85 (1984)). See also Banks v. NCAA, 977 F.2d 1081 (7th Cir. 1992) (holding NCAA rules that terminate eligibility in the event an athlete chooses to enter the professional leagues do not violate the Sherman Act).

18. *Id.* at 1186.

higher learning and student athletes. A gap is created, as the NCAA has no authority to sanction agents that do not comply with its rules.¹⁹ This gap is widened as the NCAA rules only address the "buying" of athletes by agents; the rules do not address excessive fees or provide dispute resolution and economic remedies.²⁰

B. *The Agent-Athlete Relationship*

Many competent agents represent athletes today, however there are also shady agents who seek to take advantage of athletes inexperienced in negotiating and amazed at the large salaries now facing them. For example, Bennie Blades, a current Detroit Lion, recently stated he and five other starters on Miami University's 1987 national champion football team received illicit cash payments from a sports agent.²¹ In fact, Bennie and his brother received enough cash to purchase matching Toyota MR2s.²²

1. *Why Agents Violate the Existing Rules*

A number of factors influence agents in their behavior. First, agents operate as businesspersons in quest of profit.²³ Second, there is tough competition in the market.²⁴ Third, college athletes are amateurs that cannot be paid beyond their scholarships.²⁵ Fourth, many college athletes come from economically disadvantaged backgrounds,²⁶ and are easily swayed by cash up front in exchange for signing a representation contract that is unduly favorable to the agent. Fifth, because the best athletes make the most money and sports agents typically earn a percentage of the athletes' salaries, the agent will seek to convince the best athletes to contract for his services as early as possible.²⁷ Finally, the NCAA has no authority over sports agents.²⁸ If caught in an illicit transaction, the student athlete or the school may face severe sanctions whereas the agent technically can walk away untouched.

As noted above, an agent may seek to represent a student athlete before his eligibility has expired in violation of NCAA rules. Agents may advance the players money and have them sign promissory notes.²⁹ A representation contract may be signed, postdated, and locked away until the student's eligibility has expired. Agents may pay airfare, either for players to meet them in their out-of-

19. *Id.* at 1158.

20. David Lawrence Dunn, Note, *Regulation of Sports Agents: Since at First it Hasn't Succeeded, Try Federal Legislation*, 39 HASTINGS L.J. 1031, 1042 (1988).

21. Jerry Kirshenbaum, *Now It Can Be Told*, SPORTS ILLUSTRATED, Sept. 6, 1993, at 21.

22. *Id.*

23. Cox, *supra* note 10, at 1168.

24. *Id.*

25. *Id.*

26. *Id.* at 1172.

27. *Id.* at 1169.

28. *Id.*

29. *Id.* at 1162.

state offices, or perhaps so that the student's family could attend a bowl game.³⁰ In addition, agents may woo student athletes with the following: concert tickets, automobiles, interest-free loans, hotel accommodations, use of limousines, insurance policies, even by introducing them to celebrities.³¹ All of the above violate NCAA rules. In short, sports agents face a highly competitive market with big money stakes and amazingly, the NCAA rules that govern sports agent transactions have no authority over them. Therefore, abuses may take place and the student athlete is generally the one who incurs loss.

2. *Why Students Violate the Existing Rules*

It takes two to make an illicit contract. Student athletes face loss of eligibility, public humiliation, and tainting the image of their schools by accepting money from unscrupulous agents, yet student athletes violate the existing rules. A number of factors influence the student athlete in his decision to violate NCAA rules.

First, college students typically cannot resist the opportunity to have money for immediate use.³² As college athletes, the only money available to them is a scholarship. Indeed, NCAA rules generally prevent them from working or receiving other outside sources of aid.³³ Even though a student may receive a full scholarship, there may not be money for incidental expenses, especially if the student is supporting a family. A Notre Dame football player even said he needed the money an agent offered to buy new clothes, as he had outgrown his old clothes due to weight conditioning.³⁴ Each college athlete being touted by an agent feels he will be earning a sizeable salary in the pros; many athletes visualize accepting money for immediate use as simply borrowing against future earnings.

Second, students may feel compelled to give money to their needy relatives instead of turning an illicit offer down.³⁵ This money may even be used to enable players' parents to come see the students play in a bowl game or playoff.

Third, many players have an attitude that they are professional athletes-intraining and therefore entitled to some compensation, not amateurs seeking a college education.³⁶ Many do not see taking money as amounting to a crime.

30. *Id.* at 1164.

31. Charles W. Ehrhardt & J. Mark Rogers, *Tightening the Defense Against Offensive Sports Agents*, 16 FLA. ST. U. L. REV. 633, 646 (1988).

32. Cox, *supra* note 10, at 1170.

33. *Id.* at 1171 n.71 (*citing* NCAA Const. Art. 3 § 4).

34. *Id.* at 1172.

35. *Id.*

36. Sonny Vacaro, head of a prestigious basketball camp in New Jersey, was quoted as saying, "If I were one of these players, I'd say to hell with the NCAA. I'd take the money from the booster, because I'd feel I deserve it." *Id.* at 1172 (*citing* Tom Farrey, *Should College Athletes Share the Wealth They Help Produce—Knight Commission Did Not Answer Question of "Amateur Athletics,"*

SEATTLE TIMES, Apr. 1, 1991, at C1.

One former Northwestern football player appropriately commented:

The players see what is going on. They see the full stands. They see the TV cameras, the souvenirs, the cash registers. They sense that something unjust is going on. I certainly did. I remember running into Ohio stadium with my Northwestern teammates to a deafening boo from 88,000 Ohio State fans and think[ing] that college football is so much bigger than the simple extracurricular activity people told me it was. If my teammates and I were only amateurs, why was this game such a big deal to so many paying adults?³⁷

A fourth factor is the students' youth and inexperience in negotiating.³⁸ It is not difficult for an agent to convince a college student from an economically disadvantaged background that the student needs the agent by laying out \$5,000 in cash on the desk in front of the student. Once so impressed, student athletes may not even read the representation contract, let alone understand it. Consulting an attorney is almost unheard of.³⁹

Fifth, student athletes are not oblivious to all the rule violations occurring around them and feel their violations will go undetected.⁴⁰ Colleges may violate the NCAA rules at the outset in recruiting the students from high school.⁴¹ The University of Iowa allowed a student to continue playing, in violation of NCAA academic rules, even though the student had been placed on academic probation, never attained a "C" average, and took mostly "slide" classes.⁴² Temple University continued to certify a student athlete as eligible after he failed remedial writing four times.⁴³

Finally, student athletes may indeed have a legitimate business interest in their skills. The NCAA rules may be viewed as unfair in not allowing students to market their skills until after the last playoff game of their eligibility.⁴⁴

On the other hand, even in the face of violations and unscrupulous acts, sports agents are needed. Most student athletes are inexperienced negotiators, and could be taken advantage of by the rich and powerful business organizations that own major league teams. Further, agents help athletes reach their full market potential by arranging sponsorship promotions. Finally, with the rise of free agency, a competent agent can continue to serve as an equalizer between an inexperienced negotiator and an experienced team official, thereby filling the gap between what the market can pay and the league's minimum salary.⁴⁵ Regulation of sports agents should prevent abuses and guarantee more competent representation to the student athlete. Competent sports agents are needed, not unscrupulous ones.

37. Rick Telander, *Something Must be Done*, SPORTS ILLUSTRATED, Oct. 2, 1989, at 92.

38. Cox, *supra* note 10, at 1173.

39. *Id.* at 1174.

40. *Id.* at 1177.

41. See *Thomas v. Pearl*, 998 F.2d 447, 447-50 (7 Cir. 1993).

42. Cox, *supra* note 10, at 1179. The student had taken teaching gym, officiating football, coaching basketball, bowling, billiards, and watercolor painting.

43. *Id.* at 1179.

44. *Id.* at 1188.

C. Other Attempts at Regulation

As previously stated, the NCAA Constitution has provisions that seek to regulate agents. Additionally, the National Football League Players' Association (NFLPA) instituted an agent regulation scheme in 1983.⁴⁶ The National Basketball Players' Association adopted regulations governing player agents in 1986.⁴⁷ The Major League Baseball Players' Association enacted regulations requiring agent registration in February, 1988.⁴⁸ All the players' associations are effective in that they can be tailored to the particular sport and administered by the athletes for the athletes however, the regulations are limited in scope and jurisdiction. Student athletes seeking to enter the professional leagues may not be covered by the players' associations rules.⁴⁹ A stronger regulatory base is needed.⁵⁰

The United States House of Representatives' Select Committee on Professional Sports was appointed in 1975 to consider the viability of federal regulation of agents.⁵¹ The Committee recognized the "casual, divergent, and unquestioned ethical standards of sports agents," yet failed to recommend any regulatory legislation.⁵² It has been argued that federal legislation is the only regulation that could adequately control the sports agent business for four reasons.⁵³ First, the jurisdiction of state laws would be uncertain. The sports agent would have to establish minimum contacts with the state in order to be under that state's jurisdiction. Second, federal legislation would promote uniformity. An agent would not have to learn and follow fifty potentially different sets of legislation. Third, federal legislation would eliminate conflict of law problems. The previously stated Jamal Mashburn negotiation⁵⁴ is an excellent example. Mashburn played basketball in Kentucky, his agent worked in New York, and they negotiated to play in Texas. Finally, federal legislation would prevent a logistics problem. An agent would not have to register in every state in which s/he does business. However, to date, no federal legislation has been enacted to regulate sports agents.

Since California enacted Cal. Lab. Code §§ 1500-1547 in 1981, numerous states have already enacted legislation that regulates sports agents.⁵⁵ A Bill recently introduced in Illinois would enter the state of Illinois into the fraternity of states which have enacted legislation designed to regulate sports agents.

46. *Id.* at 1043.

47. *Id.* at 1046-47.

48. Konn, *supra* note 11, at 5.

49. *See* Dunn, *supra* note 20, at 1045.

50. Dunn, *supra* note 20, at 1049.

51. *Id.*

52. *Id.*

53. *See generally* Cox, *supra* note 10.

54. *See supra* note 3 and accompanying text.

55. *See e.g.* CAL. LAB. CODE §§ 1500-1547 (West 1989); FLA. STAT. ANN. §§ 468.451-457 (West 1990); OKLA. STAT. ANN. Tit. 70, § 821.61 et seq. (West 1989); TEX. REV. CIV. STAT. ANN. art. 8871, §§ 1-10 (Vernon Supp. 1990)

III. THE SPORTS AGENT REGISTRATION ACT

On February 23, 1993, Illinois Representative Steczo introduced House Bill 618, the Sports Agent Registration Act. Thus far, the House Committee on Registration and Regulation has reported on the Bill favorably.

A. Registration

The Sports Agent Registration Act (hereinafter, the "Act"), if voted into law, would regulate agents who seek to represent student athletes who are contemplating entering the professional sports arena. "Sports Agent" is defined broadly to include "any person or entity who, directly or indirectly, recruits or solicits a student athlete to enter into an agent's contract or professional sports services contract . . . or who for a fee procures, offers, promises, or attempts to obtain employment for a student athlete with a professional sports team."⁵⁶ Attorneys are included in this definition only when negotiating a contract, either with a student athlete or on behalf of the student athlete, with a professional sport team. When an attorney is acting only as legal counsel for a student athlete, the attorney is not a "sports agent" under the terms of the Act.⁵⁷ A "student athlete" is defined as an individual who is eligible to participate in intercollegiate athletics, or who is receiving an athletic scholarship.⁵⁸ Notably, to be a student athlete within the terms of the Act, the individual must be eligible to participate in intercollegiate sports in the future.⁵⁹ Therefore, one may technically still be a "student" working toward his/her degree, but, if that student's eligibility has expired, the student is not a "student athlete" within the terms of the Act. This is synonymous with the NCAA Rules.⁶⁰

Under the proposed Act, sports agents would have to apply for registration with the Department of Professional Regulation before having any contact with a student athlete.⁶¹ Agents would have to provide the following information:

- (1) The name of the applicant and the applicant's principal place of business;
- (2) The business or occupation the applicant has been engaged in for the preceding three years;
- (3) The applicant's educational background, as well as any other experience which relate to being a sports agent;
- (4) The names and addresses of any persons financially associated with the applicant (partners, associates, profit-sharers);
- (5) Any record of felony charges or convictions of the applicant;
- (6) Any record of felony charges or convictions of the applicant's business associates (partners, associates, profit-sharers);
- (7) Any record of sanctions levied on the applicant, or any record of sanctions levied on student athletes and institutions of higher education in connection with a transaction or occurrence involving the sports agent;

56. 1993 Ill. H.B. 618 § 5.

57. *Id.*

58. *Id.*

59. *Id.*

60. See *supra* note 17 and accompanying text.

61. 1993 Ill. H.B. 618 § 10(a).

(8) Additional information deemed important by the Department.⁶²

In addition, a sports agent who is not an Illinois resident would have to sign and file with the Secretary of State an irrevocable consent to service of process in Illinois.⁶³ If the agent's business has a corporate structure, the corporation would have to enclose a copy of a resolution authorizing the consent to service.⁶⁴

If the Department registers the applicant, the applicant will receive a Certificate of Registration which is valid for two years.⁶⁵ A renewal application must then be filed every two years.⁶⁶ Further, a reasonable registration fee may be established in order to offset expenses incurred in the administration of the Act.⁶⁷

Notably, before an agent receives a certificate of registration, the agent must procure a \$50,000.00 surety bond executed by a surety company authorized to do business in Illinois.⁶⁸ The bond cannot be cancelled without at least thirty (30) days notice. The surety bond will be for the benefit of the citizens of the state and institutions of higher learning should they be awarded damages in potential litigation.⁶⁹ Indeed, the recovery of damages is not expressly limited to \$50,000.00⁷⁰ should a court find against an agent in application of this Act.

B. Denial of Registration

The Director of the Department of Professional Regulation may deny, suspend, or revoke an agent's certificate of registration. This may occur for any or all of the following reasons:

- (1) The agent made false or misleading statements of a material nature in either the application for the certificate or in a renewal application;
- (2) The agent misappropriated funds, or engaged in other acts such as embezzlement, fraud, theft, or anything else that in the judgment of the Director would render an agent unfit to act as a student athlete's fiduciary;
- (3) Contributed to sanctions or any other disciplinary action against a student athlete or institution of higher education, whether within Illinois or not;
- (4) Engaged in a material violation of the Act or a rule adopted under the Act, as shown by a preponderance of the evidence.⁷¹

62. 1993 Ill. H.B. 618 § (a)(1)-(8).

63. 1993 Ill. H.B. 618 § 10(b).

64. *Id.*

65. 1993 Ill. H.B. 618 § 10(c).

66. *Id.*

67. 1993 Ill. H.B. 618 § 10(d)(1).

68. 1993 Ill. H.B. 618 § 20(a).

69. *Id.*

70. *Id.*

71. 1993 Ill. H.B. 618 § 15.

C. Operating Under the Terms of the Act

Even if the certificate is granted, each contract the agent enters into with a student athlete must contain an admonishment in bold print which states that the Certificate of Registration does not imply approval or endorsement of the Agent by the Department.⁷² The contract would have to contain a termination clause which would allow the student athlete to void the contract within twenty-one days of the date of signing.⁷³ The contract would also have to state a warning to the student about potential loss of eligibility and that by law, the agent must inform the student's college or university of the contract within seventy-two (72) hours of signing.⁷⁴ Indeed, the agent must notify the appropriate dean or University representative personally or by certified mail within seventy-two (72) hours of signing.⁷⁵

A registered sports agent must file his/her fee schedule with the Department.⁷⁶ After filing, the agent may not deviate from the fee schedule listed with the Department.

The following activities are expressly prohibited under the proposed Act:

- (1) Attempting to act as a sports agent in Illinois without registering;
- (2) Engaging in conduct which in any way contributes to a violation of National Collegiate Athletic Association Rules, conference rules, or the rules of any other entity governing student athletes and institutions of higher education;
- (3) Entering into a representation contract, written or oral, with a student athlete prior to the last scheduled intercollegiate athletic contest, including any postseason contest;
- (4) Postdating a contract so that it takes effect after the end of the student's season;
- (5) Giving, offering, or promising something of value to a student athlete or an employee of an institution of higher education in exchange for referral of a student;
- (6) Interfering with the administration of the Act.⁷⁷

Significantly, any contract that does not follow the terms of the proposed Act, in form or in application, becomes voidable at the option of the student athlete.⁷⁸ Further, if the student exercises this option, the agent is to refund any consideration paid to the agent by the student or on the student's behalf for the agent's services.⁷⁹

72. 1993 Ill. H.B. 618 § 25(a).

73. *Id.*

74. *Id.*

75. 1993 Ill. H.B. 618 § 55.

76. 1993 Ill. H.B. 618 § 25(b).

77. 1993 Ill. H.B. 618 § 30.

78. 1993 Ill. H.B. 618 § 40.

79. *Id.*

D. Enforcement & Penalties

The Attorney General may institute legal proceedings against an agent on behalf of the State.⁸⁰ Further, if the agent's actions have caused a college or university to be sanctioned by the NCAA or the conference, the school has a civil remedy against the agent not to exceed \$50,000.00.⁸¹ Finally, the student athlete and the institution are entitled to attorney's fees and court costs should they bring an action against an agent under the proposed Act.⁸²

IV. IMPACT

The proposed Illinois Bill would be a step toward more effective regulation of agents. First and foremost, the Act seeks to regulate agents, a group that is beyond the reach of the NCAA. The bill is worded in a manner that is clearly favorable to the student athlete who is inexperienced in negotiation. The student may escape any contract made under the Act within twenty-one days. Further, if the agent in any way violates the Act, the contract is voidable *per se* at the option of the student. It is also significant that the agent must sign a form that provides the state with irrevocable consent to jurisdiction. Conflict of law problems, as previously discussed,⁸³ will certainly still arise; the act provides a solution in irrevocable consent. A civil remedy is provided to the University should the NCAA or the conference levy sanctions on the University due to the agent's acts. It is also significant that an agent *must* register in order to practice in the state of Illinois. California's agent regulation statute proved the necessity of this provision: six years after the California Act was instituted, only fourteen agents had registered.⁸⁴

The necessity of a \$50,000.00 surety bond would help ensure competence in representation and provide an incentive to not violate the Act. On the other hand, the surety bond may be viewed as unfair to an agent with a smaller practice, especially considering that if all 50 states enacted similar requirements, the burden would become substantial. This problem is complicated by the fact that the sport industry is truly national in scope. A University of Illinois student may be negotiating with sports teams in Massachusetts or California. Conversely, a North Carolina player may be negotiating with a Chicago sports team.

The statute has two other notable limitations. First, enforcement of the Act seems to be one step removed. In other words, the Act appears to stand for the proposition: "if an agent violates an NCAA or conference rule, the agent also violates this Act." The Act does not explicitly prevent unreasonable fees or "buying" athletes. Fees must be listed with the Department, but what constitutes an unreasonable fee is not mentioned. By not clearly stating potential violations, the Act risks arbitrary application in the future. Should the Act become law, the

80. 1993 Ill. H.B. 618 § 45(a).

81. 1993 Ill. H.B. 618 § 45(b).

82. 1993 Ill. H.B. 618 § 50.

83. See *supra* note 54 and accompanying text.

84. Dunn, *supra* note 20, at 1051.

possibility that the Act would be treated as a “registration” statute and not a “regulation” statute seems far from remote.

Second, the Act is somewhat unclear as to who must register. Indeed, “sports agents” must register to transact business in Illinois, but what if the negotiations are held in New York? Does the student athlete have to be from Illinois, or play in Illinois? Once again, by not stating the Act’s purpose clearly, arbitrary application is risked. However, the Act clearly does have potential to protect student athletes interests as they enter the professional marketplace, at least in the state of Illinois.

V. CONCLUSION

Enactment of the Illinois Sports Agent Registration Act would be an important step toward regulation of unscrupulous sports agents. The NCAA rules preventing the buying out of athletes as they enter the professional marketplace would have the force of law in Illinois and be enforceable in court. Agents would have to list their fee schedule and would be admonished not to deviate from that schedule. A surety bond would have to be procured to provide economic relief should a party incur damages due to the fault of an agent. Finally, the Illinois courts would provide a recognized forum for dispute resolution. On the other hand, the Act has the potential to be arbitrarily applied. Adequate enforcement of the Act would be essential, otherwise the Act would become nothing more than an optional registration mechanism for sports agents who practice in Illinois. In short, the Act has notable potential to prevent abuses in the sports agent marketplace.

Brian K. Kozminski

