

**House Bill 4857**

**Sponsor: Rep. Andrew Richner**

**Committee: Commerce**

**Complete to 2-20-02**

**A SUMMARY OF HOUSE BILL 4857 AS INTRODUCED 5-30-01**

The bill would create a new act, the athlete agents licensure act, which would:

- Require an individual to be licensed by the Department of Consumer and Industry Services before acting as, offering to act as, or holding himself or herself out as, an athlete agent. A license or a renewal would be valid for one year (although the department could issue a temporary license while an application for a license or a renewal was pending).

- Regulate the nature of the contract between an athlete agent and a student athlete and require that such a contract contain a specific warning to the student athlete about the possible loss of eligibility from signing an agency contract, and contain a notice of the ability of the student athlete to cancel the contract within 14 days (with the caution that cancellation might not reinstate eligibility).

- Require the athlete agent and the student athlete to notify the athletic director of the educational institution at which the student is enrolled or intends to enroll of the existence of the agency contract within 72 hours after entering into the contract or before the next scheduled athletic event in which the student athlete might participate, whichever occurred first.

- Prohibit an athlete agent from engaging in specified activities in order to induce a student athlete to enter into an agency contract, with a violation to be a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$1,000, or both.

- Grant an educational institution a cause of action for damages against an athlete agent or former student athlete for damages caused by a violation of the new act.

- Allow the Department of Consumer and Industry Services to assess a civil penalty or administrative fine against an athlete agent not to exceed \$25,000 for a violation of the new act. The department could issue subpoenas for any material relevant to the administration of the act. The department could also promulgate rules to enforce and administer the new act.

- Define an "athlete agent" as 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. The term would not apply to a spouse, parent, sibling, grandparent, or guardian of the student athlete or an individual acting solely on behalf of a professional sports team or a professional sports organization. The term "student athlete" would refer to 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 permanently ineligible to participate in a particular intercollegiate sport would not be considered a student athlete for the purposes of that sport. An

“agency contract” would be defined to refer to an agreement in which a student athlete authorizes a person to negotiate or solicit on his or her behalf a professional sports-services contract or an endorsement contract.

- Allow a person to act as an athlete agent without being licensed for all purposes except signing an agency contract in a case where a student athlete or a person acting on behalf of a student athlete initiates communication with the agent and if, within seven days after an initial act as an agent, the individual submits an application for licensure as an athlete agent under the new act.

Application for licensure. An applicant for licensure would have to submit an application to the Department of Consumer and Industry Services. The bill would specify the information to be contained in the application, including the name of the applicant's business or employer, where applicable; any business or occupation engaged in during the previous five years; the applicant's formal training, practical experience, and educational background regarding acting as an athlete agent; three references; the name, sport, and last known team for each individual for whom the applicant acted as an agent during the previous five years; the names and addresses of partners, members, officers, managers, associates, or profit-sharers of the applicant's business, or the officers, directors, and shareholders, with respect to a corporation employing the agent; whether the applicant or someone required to be named on the application had been convicted of a crime that, if committed in Michigan, would be a crime involving moral turpitude or a felony, and identifying the crime, if any; whether there had been any administrative or judicial determination that the applicant or a person required to be named had made a false, misleading, deceptive, or fraudulent presentation; any instance when the conduct of the applicant or a named person resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student athlete or educational institution; any sanction, suspension, or disciplinary action taken against the applicant or a named person arising out of occupational or professional conduct; and whether there had been any denial of an application for registration or licensure as an athlete agent in any state for the applicant or a named person or a revocation of a license or a refusal to renew a license. An application for licensure would have to be accompanied by payment of a \$30 fee. Renewals, which would follow a similar process, would also require a \$30 fee.

Reciprocal application. The department would accept a copy of application for registration or licensure or a certificate of registration or licensure from another state as an application for licensure in this state if: 1) it had been submitted in the other state within six months preceding the submission of the application in Michigan and the applicant certifies that the information was current; 2) the information was substantially similar to or more comprehensive than required in the application required in this state; and 3) the submission to the other state was signed by the applicant under penalty of perjury.

License denials, revocations, etc. The department could deny a license if it determined that the applicant had engaged in conduct having a significant effect on the applicant's fitness to act as an athlete agent and the department could suspend, revoke, or refuse to renew a license for conduct that would justify a denial. A license could only be denied, suspended, revoked, or non-renewed after notice and an opportunity for a hearing under the Administrative Procedures Act. In making a determination, the department could consider whether the applicant had: been

convicted of a crime involving moral turpitude or a felony; made a materially false, misleading, deceptive, or fraudulent representation in the application or as an athlete agent; engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity; engaged in prohibited conduct to induce an athlete to enter into a contract; had a registration or license suspended, revoked, denied, or not renewed in any state; engaged in conduct resulting in a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event imposed on a student athlete or educational institution; or engaged in conduct that significantly adversely reflected on the applicant's credibility, honesty, or integrity. In making the determination, the department would have to consider how recently the conduct occurred; the nature of the conduct and the context in which it occurred; and any other relevant conduct of the applicant.

Content of agency contract. An agency contract would have to be in a record and signed or otherwise authenticated by the parties. The agent would have to give a record of the signed or otherwise authenticated contract to the student athlete at the time of execution. It would have to contain: the amount and method of calculating the consideration to be paid by the student athlete for services to be provided by the athlete agent and any other consideration the agent would receive from any other source for entering into the contract or for providing the services; the name of any person not listed in the application for licensure (or renewal) who would be compensated as a result of the student athlete signing the contract; a description of any expenses the student athlete agrees to reimburse; a description of the services to be provided; the duration of the contract; and the date of execution.

The contract would also have to contain, in close proximity to the signature of the student athlete, a conspicuous warning notice in boldfaced type in capital letters. The notice would have to say the following. *Warning to student athlete if you sign this contract: 1) You may lose your eligibility to compete as a student athlete in your sport. 2) If you have an athletic director, within 72 hours after entering into this contract, both you and your athlete agent must notify your athletic director. 3) You may cancel this contract within 14 days after signing it. Cancellation of this contract may not reinstate your eligibility.*

If a contract did not substantially conform to the bill's requirements, it would be voidable by the student athlete. If a student athlete voided a contract, he or she would not be required to pay any consideration under the contract or to return any consideration received from the agent to induce the student to enter into the contract.

Cancellation of a contract. A student athlete could cancel an agency contract by giving notice to the athlete agent in a record within 14 days after the contract was signed. A student athlete could not waive the right to cancel a contract. If a student athlete cancelled a contract, he or she would not be required to pay any consideration under the contract or to return any consideration received from the agent to induce the student to enter into the contract.

Prohibited acts. An athlete agent would be prohibited from doing any of the following with the intent to induce a student athlete to enter into a contract: give any materially false or misleading information or make a materially false promise or representation; furnish anything of value to a student athlete before the student athlete entered into the contract; furnish anything of value to any individual other than the student athlete or another registered athlete agent. Further,

an agent would be prohibited from intentionally doing any of the following: initiating contact with a student athlete unless licensed under the act; refusing or failing to retain or permit inspection of records required to be maintained; failing to obtain a license when required; providing materially false or misleading information in an application for licensure or renewal; predating or postdating an agency contract; or failing to notify a student athlete, before the student athlete signed a contract for a particular sport, that the signing could make the student athlete ineligible to participate in that sport.

Committing one of the prohibited acts mentioned above would be a misdemeanor, punishable by imprisonment for up to 93 days or a fine of not more than \$1,000, or both.

Causes of action. An educational institution would have a cause of action against an athlete agent or a former student athlete for damages caused by a violation of the bill's provisions. In such an action, the court could award to the prevailing party costs and reasonable attorney fees. Damages of an educational institution include losses and expenses incurred caused by the conduct of the athlete agent or former student athlete, including any penalty, disqualification, or suspension of the institution 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 sanctions likely to be imposed by such an organization. A cause of action would not accrue until the educational institution discovered or, by the exercise of reasonable diligence, would have discovered the violation by the agent or athlete. Any liability of the agent or former student athlete would be several and not joint. The bill specifies that it would not restrict rights, remedies, or defenses of any person under law or equity.

Service of process. By acting as an athlete agent in the state, a nonresident individual would appoint the secretary of state as the individual's agent for service of process in any civil action in the state related to the individual's acting as an athlete agent.

Effective date. As introduced, the bill contains an effective date of January 1, 2002.

Analyst: C. Couch

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.