

HOUSE BILL No. 4857

May 30, 2001, Introduced by Reps. Richner, Lemmons, McConico, Meyer, Stewart, Adamini, Hager, Van Woerkom, Kolb, DeVuyst, Bovin and Richardville and referred to the Committee on Commerce.

A bill to regulate and license certain individuals conducting certain transactions and acting as athlete agents in this state; to regulate certain student-athletes; to regulate certain contracts and agreements; to impose certain fees; to provide for certain powers and duties for certain state departments and agencies; to provide for adoption of rules; to create certain causes of action; and to provide for remedies and penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "athlete agents licensure act".

3 Sec. 3. As used in this act:

4 (a) "Agency contract" means an agreement in which a
5 student-athlete authorizes a person to negotiate or solicit on
6 behalf of the student-athlete a professional sports-services
7 contract or an endorsement contract.

1 (b) "Athlete agent" means an individual who enters into an
2 agency contract with a student-athlete or, directly or indirect-
3 ly, recruits or solicits a student-athlete to enter into an
4 agency contract. Athlete agent does not include a spouse,
5 parent, sibling, grandparent, or guardian of the student-athlete
6 or an individual acting solely on behalf of a professional sports
7 team or professional sports organization.

8 (c) "Athletic director" means an individual responsible for
9 administering the overall athletic program of an educational
10 institution or, if an educational institution has separately
11 administered athletic programs for male students and female stu-
12 dents, the athletic program for males or the athletic program for
13 females, as appropriate.

14 (d) "Contact" means a communication, direct or indirect,
15 between an athlete agent and a student-athlete, intended to
16 recruit or solicit the student-athlete to enter into an agency
17 contract.

18 (e) "Department" means the department of consumer and indus-
19 try services.

20 (f) "Endorsement contract" means an agreement under which a
21 student-athlete is employed or receives consideration to use on
22 behalf of the other party any value that the student-athlete may
23 have because of publicity, reputation, following, or fame
24 obtained resulting from athletic ability or performance.

25 (g) "Intercollegiate sport" means a sport played at the col-
26 legiate level for which eligibility requirements for
27 participation by a student-athlete are established by a national

1 association for the promotion or regulation of collegiate
2 athletics.

3 (h) "Person" means an individual, corporation, business
4 trust, estate, trust, partnership, limited liability company,
5 association, joint venture, government, governmental subdivision,
6 or any other legal or commercial entity.

7 (i) "Professional sports-services contract" means an agree-
8 ment under which an individual is employed, or agrees to render
9 services, as a player on a professional sports team, with a pro-
10 fessional sports organization or as a professional athlete.

11 (j) "Record" means information that is inscribed on a tangi-
12 ble medium or that is stored in an electronic or other medium and
13 is retrievable in perceivable form.

14 (k) "Student-athlete" means an individual who engages in, is
15 eligible to engage in, or may be eligible in the future to engage
16 in, any intercollegiate sport. An individual permanently ineli-
17 gible to participate in a particular intercollegiate sport is not
18 a student-athlete for purposes of that sport.

19 Sec. 5. (1) By acting as an athlete agent in this state, a
20 nonresident individual appoints the secretary of state as the
21 individual's agent for service of process in any civil action in
22 this state related to the individual's acting as an athlete agent
23 in this state.

24 (2) The department may issue subpoenas for any material that
25 is relevant to the administration of this act.

26 Sec. 7. (1) Except as otherwise provided in subsection (2),
27 an individual may not act as, offer to act as, or hold himself or

1 herself out as being an athlete agent in this state without being
2 licensed as an athlete agent under this act.

3 (2) Before being issued a license, an individual may act as
4 an athlete agent in this state for all purposes except signing an
5 agency contract, if a student-athlete or another person acting on
6 behalf of the student-athlete initiates communication with the
7 individual and, within 7 days after an initial act as an athlete
8 agent, the individual submits an application for licensure as an
9 athlete agent under this act.

10 (3) An agency contract resulting from conduct in violation
11 of this section is void, and the athlete agent shall return any
12 consideration received under the contract.

13 (4) The department may promulgate rules under the adminis-
14 trative procedures act of 1969, 1969 PA 306, MCL 24.201 to
15 24.328, to enforce and administer this act.

16 Sec. 9. (1) An applicant for licensure shall submit an
17 application for licensure to the department in a form prescribed
18 by the department. The application must be in the name of an
19 individual and, except as otherwise provided in subsection (2),
20 signed or otherwise authenticated by the applicant under penalty
21 of perjury and state or contain the following:

22 (a) The name of the applicant and the address of the
23 applicant's principal place of business.

24 (b) The name of the applicant's business or employer, if
25 applicable.

1 (c) Any business or occupation engaged in by the applicant
2 for the 5 years preceding the date of submission of the
3 application.

4 (d) A description of the applicant's formal training as an
5 athlete agent, practical experience as an athlete agent, and edu-
6 cational background relating to the applicant's activities as an
7 athlete agent.

8 (e) The names and addresses of 3 individuals not related to
9 the applicant who are willing to serve as references.

10 (f) The name, sport, and last known team for each individual
11 for whom the applicant acted as an athlete agent during the 5
12 years preceding the date of submission of the application.

13 (g) The names and addresses of all persons who are, with
14 respect to the athlete agent's business if it is not a corpora-
15 tion, the partners, members, officers, managers, associates, or
16 profit-sharers of the business and, with respect to a corporation
17 employing the athlete agent, the officers, directors, and any
18 shareholder of the corporation having an interest of 5% or
19 greater.

20 (h) Whether the applicant or any person named under subdivi-
21 sion (g) has been convicted of a crime that, if committed in this
22 state, would be a crime involving moral turpitude or a felony,
23 and identify the crime.

24 (i) Whether there has been any administrative or judicial
25 determination that the applicant or any person named under subdivi-
26 sion (g) has made a false, misleading, deceptive, or fraudulent
27 representation.

1 (j) Any instance in which the conduct of the applicant or
2 any person named under subdivision (g) resulted in the imposition
3 of a sanction, suspension, or declaration of ineligibility to
4 participate in an interscholastic or intercollegiate athletic
5 event on a student-athlete or educational institution.

6 (k) Any sanction, suspension, or disciplinary action taken
7 against the applicant or any person named under subdivision (g)
8 arising out of occupational or professional conduct.

9 (l) Whether there has been any denial of an application for,
10 suspension or revocation of, or refusal to renew, the registra-
11 tion or licensure of the applicant or any person named under sub-
12 division (g) as an athlete agent in any state.

13 (2) An individual who has submitted an application for, and
14 holds a certificate of, registration or licensure as an athlete
15 agent in another state may submit a copy of the application and
16 certificate in lieu of submitting an application in the form pre-
17 scribed pursuant to subsection (1). The department shall accept
18 the application and the certificate from the other state as an
19 application for licensure in this state if the application to the
20 other state complies with all of the following:

21 (a) Was submitted in the other state within 6 months preced-
22 ing the submission of the application in this state and the
23 applicant certifies that the information contained in the appli-
24 cation is current.

25 (b) Contains information substantially similar to or more
26 comprehensive than that required in an application submitted in
27 this state as determined by the department.

1 (c) Was signed by the applicant under penalty of perjury.

2 Sec. 11. (1) Except as otherwise provided in subsection
3 (2), the department shall issue a license to an individual who
4 complies with section 9(1) or whose application has been accepted
5 under section 9(2).

6 (2) The department may deny a license if the department
7 determines that the applicant has engaged in conduct that has a
8 significant adverse effect on the applicant's fitness to act as
9 an athlete agent. In making the determination, the department
10 may consider whether the applicant has done any of the
11 following:

12 (a) Been convicted of a crime that, if committed in this
13 state, would be a crime involving moral turpitude or a felony.

14 (b) Made a materially false, misleading, deceptive, or
15 fraudulent representation in the application or as an athlete
16 agent.

17 (c) Engaged in conduct that would disqualify the applicant
18 from serving in a fiduciary capacity.

19 (d) Engaged in conduct prohibited by section 27.

20 (e) Had a registration or licensure as an athlete agent sus-
21 pended, revoked, or denied or been refused renewal of registra-
22 tion or licensure as an athlete agent in any state.

23 (f) Engaged in conduct resulting in a sanction, suspension,
24 or declaration of ineligibility to participate in an interscho-
25 lastic or intercollegiate athletic event imposed upon a
26 student-athlete or educational institution.

1 (g) Engaged in conduct that significantly adversely reflects
2 on the applicant's credibility, honesty, or integrity.

3 (3) In making a determination under subsection (2), the
4 department shall consider all of the following:

5 (a) How recently the conduct occurred.

6 (b) The nature of the conduct and the context in which it
7 occurred.

8 (c) Any other relevant conduct of the applicant.

9 (4) An athlete agent may apply to renew a license by submit-
10 ting an application for renewal in a form prescribed by the
11 department. The application for renewal must be signed by the
12 applicant under penalty of perjury and must contain current
13 information on all matters required in an original application
14 for licensure.

15 (5) An individual who has submitted an application for
16 renewal of registration or licensure in another state, in lieu of
17 submitting an application for renewal in the form prescribed pur-
18 suant to subsection (4), may file a copy of the application for
19 renewal and a valid certificate of registration or licensure from
20 the other state. The department shall accept the application for
21 renewal from the other state as an application for renewal in
22 this state if the application to the other state complies with
23 all of the following:

24 (a) Was submitted in the other state within 6 months preced-
25 ing the filing in this state and the applicant certifies the
26 information contained in the application for renewal is current.

1 (b) Contains information substantially similar to or more
2 comprehensive than that required in an application for renewal
3 submitted in this state.

4 (c) Was signed by the applicant under penalty of perjury.

5 (6) A license or a renewal of a license is valid for 1
6 year.

7 Sec. 13. (1) The department may suspend, revoke, or refuse
8 to renew a license for conduct that would have justified denial
9 of licensure under section 11(2).

10 (2) The department may deny, suspend, revoke, or refuse to
11 renew a license only after notice and an opportunity for a hear-
12 ing pursuant to the administrative procedures act of 1969, 1969
13 PA 306, MCL 24.201 to 24.328.

14 Sec. 15. The department may issue a temporary license while
15 an application for licensure or renewal is pending.

16 Sec. 17. An application for licensure or renewal of licen-
17 sure must be accompanied by a fee in the following amount:

18 (a) \$30.00 for an initial application for licensure and for
19 an application for licensure based upon a certificate of regis-
20 tration or license issued by another state.

21 (b) \$30.00 for an application for renewal of licensure and
22 for an application for renewal of licensure based upon an appli-
23 cation for renewal of registration or licensure submitted in
24 another state.

25 Sec. 19. (1) An agency contract must be in a record and
26 signed or otherwise authenticated by the parties.

1 (2) An agency contract must state or contain all of the
2 following:

3 (a) The amount and method of calculating the consideration
4 to be paid by the student-athlete for services to be provided by
5 the athlete agent under the contract and any other consideration
6 the athlete agent has received or will receive from any other
7 source for entering into the contract or for providing the
8 services.

9 (b) The name of any person not listed in the application for
10 licensure or renewal of licensure who will be compensated as a
11 result of the student-athlete signing the agency contract.

12 (c) A description of any expenses that the student-athlete
13 agrees to reimburse.

14 (d) A description of the services to be provided to the
15 student-athlete.

16 (e) The duration of the contract.

17 (f) The date of execution.

18 (3) An agency contract must contain, in close proximity to
19 the signature of the student-athlete, a conspicuous notice in
20 boldfaced type in capital letters stating the following:

21 **WARNING TO STUDENT-ATHLETE IF YOU SIGN THIS CONTRACT:**

22 **(1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A**
23 **STUDENT-ATHLETE IN YOUR SPORT.**

24 **(2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER**
25 **ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST**
26 **NOTIFY YOUR ATHLETIC DIRECTOR.**

1 (3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER
2 SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR
3 ELIGIBILITY.

4 (4) An agency contract that does not substantially conform
5 to this section is voidable by the student-athlete. If a
6 student-athlete voids an agency contract, the student-athlete is
7 not required to pay any consideration under the contract or to
8 return any consideration received from the athlete agent to
9 induce the student-athlete to enter into the contract.

10 (5) The athlete agent shall give a record of the signed or
11 otherwise authenticated agency contract to the student-athlete at
12 the time of execution.

13 Sec. 21. (1) Within 72 hours after entering into an agency
14 contract or before the next scheduled athletic event in which the
15 student-athlete may participate, whichever occurs first, the ath-
16 lete agent shall give notice in a record of the existence of the
17 contract to the athletic director of the educational institution
18 at which the student-athlete is enrolled or the athlete agent has
19 reasonable grounds to believe the student-athlete intends to
20 enroll.

21 (2) Within 72 hours after entering into an agency contract
22 or before the next athletic event in which the student-athlete
23 may participate, whichever occurs first, the student-athlete
24 shall inform the athletic director of the educational institution
25 at which the student-athlete is enrolled that he or she has
26 entered into an agency contract.

1 Sec. 23. (1) A student-athlete may cancel an agency
2 contract by giving notice of the cancellation to the athlete
3 agent in a record within 14 days after the contract is signed.

4 (2) A student-athlete may not waive the right to cancel an
5 agency contract.

6 (3) If a student-athlete cancels an agency contract, the
7 student-athlete is not required to pay any consideration under
8 the contract or to return any consideration received from the
9 athlete agent to induce the student-athlete to enter into the
10 contract.

11 Sec. 25. (1) An athlete agent shall retain the following
12 records for a period of 5 years:

13 (a) The name and address of each individual represented by
14 the athlete agent.

15 (b) Any agency contract entered into by the athlete agent.

16 (c) Any direct costs incurred by the athlete agent in the
17 recruitment or solicitation of a student-athlete to enter into an
18 agency contract.

19 (2) Records required by subsection (1) to be retained are
20 open to inspection by the department during normal business
21 hours.

22 Sec. 27. (1) An athlete agent, with the intent to induce a
23 student-athlete to enter into an agency contract, may not do any
24 of the following:

25 (a) Give any materially false or misleading information or
26 make a materially false promise or representation.

1 (b) Furnish anything of value to a student-athlete before
2 the student-athlete enters into the agency contract.

3 (c) Furnish anything of value to any individual other than
4 the student-athlete or another registered athlete agent.

5 (2) An athlete agent may not intentionally do any of the
6 following:

7 (a) Initiate contact with a student-athlete unless licensed
8 under this act.

9 (b) Refuse or fail to retain or permit inspection of the
10 records required to be retained by section 25.

11 (c) Fail to obtain a license when required by section 7.

12 (d) Provide materially false or misleading information in an
13 application for licensure or renewal of licensure.

14 (e) Predate or postdate an agency contract.

15 (f) Fail to notify a student-athlete, before the
16 student-athlete signs or otherwise authenticates an agency con-
17 tract for a particular sport, that the signing or authentication
18 may make the student-athlete ineligible to participate as a
19 student-athlete in that sport.

20 Sec. 29. An athlete agent who violates section 27 is guilty
21 of a misdemeanor punishable by imprisonment for not more than 93
22 days or a fine of not more than \$1,000.00, or both.

23 Sec. 31. (1) An educational institution has a cause of
24 action for damages against an athlete agent or a former
25 student-athlete for damages caused by a violation of this act.
26 In an action under this section, the court may award to the
27 prevailing party costs and reasonable attorney fees.

1 (2) Damages of an educational institution under subsection
2 (1) include losses and expenses incurred caused by the conduct of
3 an athlete agent or former student-athlete that was in violation
4 of this act. The losses include any penalty, disqualification,
5 or suspension of the educational institution from participation
6 in athletics by a national association for the promotion and reg-
7 ulation of athletics, by an athletic conference, or by reasonable
8 self-imposed disciplinary action taken to mitigate sanctions
9 likely to be imposed by such an organization.

10 (3) A cause of action under this section does not accrue
11 until the educational institution discovers or, by the exercise
12 of reasonable diligence, would have discovered the violation by
13 the athlete agent or former student-athlete.

14 (4) Any liability of the athlete agent or the former
15 student-athlete under this section is several and not joint.

16 (5) This act does not restrict rights, remedies, or defenses
17 of any person under law or equity.

18 Sec. 33. The department may assess a civil penalty or
19 administrative fine against an athlete agent not to exceed
20 \$25,000.00 for a violation of this act.

21 Sec. 35. This act takes effect January 1, 2002.