



**House
Legislative
Analysis
Section**

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REGULATION OF ATHLETES' AGENTS

House Bill 4804 as passed by the House
Sponsor: Rep. Michael J. Bennane

House Bill 5073 as passed by the House
Sponsor: Rep. Kirk A. Profit

RECEIVED

Second Analysis (8-7-90)
Committee: Judiciary

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THE APPARENT PROBLEM:

The behavior of unscrupulous agents who prey upon talented but naive student athletes has given rise to calls for legislative action. While there exist private rules and administrative sanctions (for example, those of the National Collegiate Athletic Association or NCAA), they are inadequate, in large part because they govern the conduct of students and schools but not of agents and boosters. When it is revealed that a student has signed a contract with an agent while still engaging in college athletics, the student suffers by forfeiting further eligibility but the agent goes unpunished by private organizations. Critics cite cases of agents taking a "shotgun approach" by signing up large numbers of student-athletes, sometimes enticing them with loans, hoping that a few will gain lucrative contracts from professional sports teams.

There are several dangers in these practices. First of all, students can be hurt. They can lose their eligibility to play college sports, they can lose the scholarship support needed to complete their educational programs, they can injure their reputations, and they can find themselves in debt to agents without any hope of making it in professional sports (very few college athletes ever play professionally). Schools, too, can suffer from these activities, by losing valuable players and gaining unsavory reputations that will adversely affect public support. College athletic programs and coaches in particular face the prospect of losing their influence over student-athletes when athletes are indebted to or otherwise in the control of unethical agents. Among other things, this could lead to problems with gambling and point-shaving.

Obviously, someone who has no scruples about endangering a student's eligibility will not necessarily take the trouble to become well-qualified as a financial advisor, or to prevent conflicts of interest, or to refrain from fraudulent activities. In extreme cases, sports agents may resort to extortion, as, for example, was alleged in the August 1988 indictments of two New York agents charged with fraud, extortion, racketeering, and obstruction of justice (recent committee testimony indicated that those agents were convicted).

While laws against fraud and extortion have existed for some time, until recently Michigan had no statute specifically dealing with problems presented by unscrupulous agents and unethical boosters. Public Act 476 of 1988 amended the penal code to establish criminal penalties for an agent who offered inducements to a student athlete or kickbacks to a college employee. Public Act 477 of 1988 created a new public act that forbade giving or accepting anything of value in exchange for an athlete's attendance at a particular college or participation in an intercollegiate sporting event. However, existing law,

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many believe, is not sufficient to combat the problem of unethical and untrained sports agents, a problem faced not only by college and amateur athletes, but also by professionals. What is needed, many say, is state licensure and regulation, including requirements for disclosures to prospective clients.

THE CONTENT OF THE BILLS:

House Bill 5073 would create the Athlete Agent's Licensing Act, and would prohibit an individual from acting or offering to act as an athlete agent without a license from the Department of Licensing and Regulation. The bill would also incorporate prohibitions added to the penal code by Public Act 476 of 1988; those provisions forbid providing inducements to college athletes and kickbacks to college employees. The bill would prescribe fees and minimum qualifications for licensure, provide investigative and administrative powers for the department, and specify administrative and criminal penalties, along with civil remedies. Boxing managers and a student athlete's immediate family members would be exempt from the bill. The bill would take effect April 1, 1991. Further details follow.

Minimum requirements, disclosures. To be licensed under the bill, a person would have to be a legal adult of good moral character, and could not have engaged in conduct that led to a sanction by an intercollegiate sports coordinating body or a professional sports association. Along with other basic information, an applicant for an athlete agent's license would have to provide the department with a \$25,000 cash or surety bond and a disclosure statement. The disclosure statement would have to contain the educational background, training, and experience of the agent, the names of any professional sports teams with whom the applicant was affiliated, a record of all misdemeanor and felony convictions, and a record of any sanctions issued to or disciplinary actions taken against the agent or any athlete, professional sports team, or institution of higher education as a result of the agent's conduct. An agent seeking authority to make investments for clients would have to in addition disclose business experience, recent bankruptcies, and the names of persons in whom the agent or affiliates had more than a five percent ownership interest. The disclosure statement would have to be updated as necessary. Prospective clients would have to be given a copy of the current disclosure statement.

Licenses, fees. Licenses would be for three years; a license would expire on March 31, and be renewable for 60 days thereafter. After 60 days, a person would have to apply for a new license. License fees would be as follows: application processing fee, \$200; license fee, per year, \$500; contract filing fee, \$100; late renewal penalty, \$25.

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Additional fees could be charged as follows: \$10 for a duplicate license, \$5 for providing written verification of a person's licensure, \$2 (or cost) for a copy of the act and rules, \$10 for issuing a new license upon a change in a licensee's circumstances. A license would have to be conspicuously displayed in the agent's place of business. Each licensee would have to carry and produce upon demand a pocket card provided by the department.

Prohibitions. An athlete agent would be specifically forbidden from: inducing a student athlete to enter into an agent contract before collegiate eligibility expired (however, this would not apply when a student had already declared ineligibility); providing kickbacks to college employees; making misrepresentations in persuading athletes to accept terms; or falsifying any documents required under the bill.

Records. Each agent contract would have to embody all the terms of the agreement between the parties, and an agent would have to file with the department a copy of each contract within 30 days after it was signed by a client. The purpose of the filing would be to confirm the contract's existence; its contents would be exempt from the Freedom of Information Act. The agent would have to maintain a record of all contracts and related financial transactions and would have to permit the department to inspect the books and records during customary business hours upon request.

Investigations, penalties. The Department of Licensing and Regulation would have to review the operations of licensees and of unlicensed people allegedly acting as athlete agents, and investigate all complaints. It could initiate contested case proceedings based on findings of an investigation. The department, faced with violations, would be authorized to revoke and suspend licenses, issue licenses with special conditions, deny license renewals, issue written reprimands and letters of censure, impose civil fines of up to \$10,000 per offense, order restitution, increase an agent's bond, and issue cease and desist orders.

It would be a misdemeanor punishable by imprisonment for not more than 90 days or by a fine of not more than \$25,000, or both, to act as or offer to act as an athlete agent without a license or to interfere with a departmental investigation.

Either the department or the attorney general could seek subpoenas or petition the circuit court for injunctive relief.

To be allowed to sue for compensation as an athlete agent, an agent would have to prove that he or she was licensed under the bill during the period in question.

House Bill 4804 would create the Athlete Agent Contract Act, which would establish standards for contracts between athletes and agents and would require agents to make certain disclosures in their dealings with athletes. Members of a student athlete's immediate family would not be considered agents under the bill. An attorney who gave an athlete legal advice concerning a proposed contract would be exempt from the bill if the attorney did not represent the athlete in negotiating or soliciting an endorsement contract, a licensing contract, a personal appearance contract, or a professional sports services contract. The bill would establish civil remedies and criminal penalties for violations. A more detailed description follows.

Disclosures, inspections. Before attempting to represent an athlete, an agent would have to furnish the athlete with a

disclosure statement as prescribed by the bill. That disclosure statement basically would be the same as that which House Bill 5073 would require to be submitted to the Department of Licensing and Regulation. However, in relation to each person in whom the agent's ownership interest exceeded five percent, the agent would in addition have to disclose any indebtedness of more than \$5,000, board membership, appointment or election as an officer, and receipt of more than \$1,000 per year. An agent would have to notify an athlete within 30 days of any change in business address. Upon 48 hours notice, a professional athlete could audit the books and records the agent maintained on the athlete.

Contracts. An agent contract would have to be written in the athlete's first language; that is, it would have to be in the language which the athlete speaks fluently, or, for multi-lingual athletes, the language of the athlete's choice. A copy of the disclosure statement and proposed contract would be provided to the athlete at least seven business days before the planned date of execution of the contract.

Each athlete-agent contract would have to include a notice informing the athlete that he or she would have three business days after the date of execution to cancel the contract without cause, together with a declaration for the athlete to sign and date in order to cancel the contract. Details on the agent's compensation, both in absolute terms and relative to the athlete's compensation, would have to be included in a form similar to one provided by the bill. The contract also would have to explain that the athlete could audit agent books and records, and that the athlete could sue within two years to void the contract and collect attorney fees and treble damages. Criminal penalties for violation of the bill also would be outlined. A contract would include a certification signed by the agent that all the information in the contract was true and complete to the best of his or her knowledge. There would be a place labeled "acknowledgment and receipt" for the athlete to sign to certify the date of receipt of the contract. A copy of the disclosure statement would be attached to the contract.

Cancellation. An athlete could cancel an agent contract without cause within three business days after the date of execution. An agent could not charge the athlete for any goods, services, or expenses attributable to that three-day period.

Civil remedies, voiding of contract. Within two years after the date of execution of an agent contract, an athlete could bring a civil action to void the contract for violation of the bill. The court would have to award actual attorney fees to the athlete if he or she prevailed. Upon proof of a willful violation of the bill, the court could award treble damages to the athlete.

Criminal penalties. An athlete agent who intentionally deceived an athlete into signing an agent contract would be guilty of a misdemeanor punishable by up to 90 days in jail, a fine of up to \$50,000, or both.

FISCAL IMPLICATIONS:

According to a department analysis issued March 30, 1990, the Department of Licensing and Regulation estimates first year administrative costs of \$135,000, assuming 50 or fewer licensees each filing 20 contracts per year. The department anticipates that the fees as proposed would provide sufficient revenue to the general fund to support the program. (8-7-90)

ARGUMENTS:

For:

Exceptionally talented athletes can occasionally earn spectacular amounts of money while they are still quite young, and then find their earning power diminished to a fraction of its former level after injury or age takes its toll. The combination of high income potential and immaturity makes some athletes attractive prey for unscrupulous financial advisors and agents. By requiring athlete agents to be licensed and to make certain disclosures to prospective clients, the bills would help athletes to identify not only the unscrupulous but also the incompetent and unqualified. As many of the athletes who are the subject of agents' attention are young and naive, the bills include not only standard consumer provisions such as a three-day cancellation period, but also exemptions from licensure for family members who may counsel and represent an athlete. Contracts themselves would have to be specific as to the relative amounts of athlete and agent compensation.

Against:

It is not clear that the legislature should involve itself in this issue. The private rules and remedies that exist may not be perfect or always effective but is that reason for the state to regulate the economic behavior of adults in this way? Is it wise for the legislature to give NCAA rules the force of law and grant implicit approval to the existing aims and incentives of college athletics? The state has recently acted to criminalize early signing, and that, perhaps coupled with more effective educational programs for student-athletes, alumni, and agents, should be enough. The athletes in question are adults, and presumably capable of making decisions for themselves; many professions (actors and musicians, for example) are vulnerable to the predations of unscrupulous agents or financial advisors, but the bills would single out athletes as being deserving of special protection against the consequences of their own greed or stupidity. Further, the bills do not demand any meaningful demonstration of competence from those seeking licensure as athlete agents, and thus could mislead the naive into thinking that a licensed agent was confirmed to be a capable professional. The bills are unnecessary; fraud, misappropriation of funds, extortion, and early signing of student-athletes are already illegal.

Response: The bills offer important checks on athletes' agents. They provide the state and clients with the ability to inspect agents' records, and require disclosure of information indicative of an agent's ability and honesty. Obtaining a conviction of an unscrupulous agent under the criminal laws that already exist requires the cooperation of the local prosecutor, a great deal of time, and the establishment of proof beyond a reasonable doubt. Under the bills, administrative and consumer remedies could be much more readily obtained. Of particular benefit could be the provision allowing an athlete to bring a civil suit to void a contract upon an agent's violation of House Bill 4804.

Against:

House Bill 4804 strays from standard policy in its provision for court awards to professional athletes who prevail in suits against their agents. Under the bill, the court would have to award "actual" attorney fees. To prevent overcharging, statutory language commonly suggests that courts may award "reasonable" attorney fees.

POSITIONS:

The National Association of Personal Financial Advisors supports the concept of requiring disclosures in contracts between athletes and prospective agents. (8-7-90)

The Department of Licensing and Regulation does not oppose House Bill 5073, providing sufficient revenues are provided. The department has no position on House Bill 4804. (8-7-90)