

HOUSE BILL No. 4066

February 5, 1991, Introduced by Rep. Profit and referred to the Committee on Judiciary.

A bill to license and regulate athlete agents; to prescribe certain powers and duties of certain state agencies and departments; and to provide for penalties and remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

3 Sec. 3. As used in this act:

4 (a) "Agent contract" means any contract or agreement pursu-
5 ant to which an athlete authorizes another individual to negoti-
6 ate or solicit on behalf of the athlete for an endorsement con-
7 tract, licensing contract, personal appearance contract, or a
8 professional sports services contract.

9 (b) "Athlete" means an individual who is a student athlete,
10 professional athlete, or an individual seeking to become a
11 professional athlete.

1 (c) "Athlete agent" means an individual not exempt under
2 section 5(3) of this act who, directly or indirectly and for
3 valuable consideration or remuneration of any kind, does either
4 of the following:

5 (i) Recruits or solicits an athlete to enter into an agent
6 contract.

7 (ii) Enters into an agent contract with an athlete.

8 (d) "Department" means the department of licensing and
9 regulation.

10 (e) "Endorsement contract" means an agreement pursuant to
11 which an athlete is employed or receives remuneration to provide
12 an endorsement of, or testimonial promoting of, a product or
13 service.

14 (f) "Immediate family" means a student athlete's spouse,
15 child, parent, stepparent, grandparent, grandchild, brother,
16 sister, parent-in-law, brother-in-law, sister-in-law, nephew,
17 niece, aunt, uncle, first cousin, or the spouse or guardian of
18 any of the persons described in this subdivision.

19 (g) "Institution of higher education" means a public or pri-
20 vate college or university. Institution of higher education
21 includes a community college.

22 (h) "Licensee" means a person who is licensed pursuant to
23 this act.

24 (i) "Licensing contract" means an agreement pursuant to
25 which an athlete is employed or receives remuneration for autho-
26 rizing another person to use his or her name or image in
27 connection with a product or service.

1 (j) "Person" means an individual, sole proprietorship,
2 partnership, association, corporation, or other legal entity.

3 (k) "Personal appearance contract" means an agreement pursu-
4 ant to which an athlete is employed or receives remuneration to
5 deliver a speech or personally appear at an event or function.

6 (l) "Professional athlete" means an individual employed or
7 receiving remuneration as a player on a professional sports team
8 or as a participant in a professional sports event.

9 (m) "Professional sports services contract" means a contract
10 or agreement pursuant to which an individual is employed or
11 agrees to render services as a player on a professional sports
12 team or as a participant in a professional sports event.

13 (n) "Student athlete" means an individual who engages in, is
14 eligible to engage in, or may be eligible to engage in any inter-
15 collegiate sporting event, contest, exhibition, or program.

16 Sec. 5. (1) Except as otherwise provided in subsection (3),
17 an individual shall not act or offer to act as an athlete agent
18 unless the individual is licensed pursuant to this act.

19 (2) The department shall license only an individual as an
20 athlete agent.

21 (3) The following are exempt from this act:

22 (a) A boxing manager licensed under article 8 of the occupa-
23 tional code, Act No. 299 of the Public Acts of 1980, being sec-
24 tions 339.801 to 339.814 of the Michigan Compiled Laws.

25 (b) A member of the student athlete's immediate family in a
26 case where that member of the immediate family recruits or
27 solicits that student athlete to enter into an agent contract or

1 where that member of the immediate family enters into an agent
2 contract with that student athlete.

3 (4) A student athlete may declare himself or herself ineli-
4 gible as a student athlete by filing a statement declaring his or
5 her ineligibility with the institution of higher education in
6 which the student athlete is enrolled.

7 Sec. 7. (1) An individual applying for a license under this
8 act shall apply to the department on a form provided by the
9 department. The application form shall include information
10 required by this act and any other information considered neces-
11 sary by the department to fulfill its obligations under this
12 act.

13 (2) Fees for licensure under this act are as follows:

14 (a) Application processing fee..... \$200.00.

15 (b) License fee, per year..... 500.00.

16 (c) Contract filing fee, per contract..... 100.00.

17 (d) Late renewal penalty..... 25.00.

18 (3) The department may charge a \$10.00 fee for the issuance
19 of a duplicate license, if the individual applying for the dupli-
20 cate signs a statement that the original license has been lost,
21 stolen, or destroyed.

22 (4) The department may charge a \$5.00 fee for providing
23 written verification that an individual is or is not licensed at
24 the time of the request for verification. If the person request-
25 ing verification seeks specific detailed information beyond
26 simple confirmation of licensure, the charge shall be \$15.00.

1 (5) The department may charge a fee for the publication and
2 distribution of this act and the rules promulgated under this
3 act. The fee shall be \$2.00 or the cost of the publication,
4 whichever is greater.

5 (6) The department may charge a \$10.00 fee for correcting
6 its records and issuing a new license when an individual notifies
7 the department of a change of any information requiring the issu-
8 ance of a new license. If the change does not require the issu-
9 ance of a new license, a charge shall not be made for correcting
10 department records.

11 (7) An individual licensed under this act shall meet all of
12 the following requirements:

13 (a) Be at least 18 years of age.

14 (b) Be of good moral character, as defined and determined in
15 Act No. 381 of the Public Acts of 1974, being sections 338.41 to
16 338.47 of the Michigan Compiled Laws.

17 (c) Not be under sanction or have been a participant in con-
18 duct which resulted in the issuing of a current sanction to an
19 athlete, professional sport team, or institution of higher educa-
20 tion by an intercollegiate sports coordinating body or profes-
21 sional sports association.

22 (d) Provide evidence of a bond as required by section 11.

23 (e) File with the department a disclosure statement meeting
24 the requirements of section 13.

25 (f) Pay the necessary fees prescribed in section 7.

26 Sec. 9. (1) The license issued under this act shall be
27 conspicuously displayed in the athlete agent's place of

1 business. Each licensee shall carry and produce upon demand a
2 pocket card provided by the department which indicates that the
3 individual is licensed under this act.

4 (2) An athlete agent shall notify the department of any
5 change of business address not later than 30 days after the
6 change occurs.

7 (3) A nonresident of this state may be licensed under this
8 act if the individual complies with this act, including the
9 filing of an irrevocable consent to service of process on a form
10 provided by the department. The consent shall be signed by the
11 applicant and shall be notarized. The consent shall indicate
12 that a process or pleading served upon the department shall be
13 sufficient service upon the licensee if the plaintiff simulta-
14 neously forwards by certified mail 1 copy of the process or
15 pleading to the business address of the licensee.

16 Sec. 11. (1) Subject to section 23(h), an athlete agent
17 shall provide a cash or surety bond with a principal sum of
18 \$25,000.00, payable to the people of the state of Michigan and
19 conditioned that the individual athlete agent will do all of the
20 following:

21 (a) Comply with this act and rules promulgated under this
22 act.

23 (b) Pay all sums due a person at the time the sums are due
24 and payable.

25 (c) Pay all damages after a judgment or settlement to any
26 person by reason of intentional or unintentional misstatement,
27 misrepresentation, fraud, deceit, or any unlawful or negligent

1 acts, or omissions of the athlete agent while acting as an
2 athlete agent, or his or her representatives or employees while
3 acting within the scope of their employment, including, but not
4 limited to, a violation of this act and rules promulgated under
5 this act.

6 (2) The bond shall be made upon a form provided by the
7 department. A surety bond shall be written by a company recog-
8 nized and approved by the commissioner of insurance to do busi-
9 ness in this state. A cash bond shall be provided to the depart-
10 ment and deposited with the state treasurer in accordance with
11 the regulations of the department of treasury for the deposit of
12 cash bonds.

13 (3) A bond provided under this section shall not limit or
14 impair a right of recovery otherwise available under the law.

15 Sec. 13. (1) An athlete agent shall file with the depart-
16 ment a disclosure statement which shall contain all of the fol-
17 lowing, in relation to the athlete agent:

18 (a) His or her educational background, including schools and
19 colleges attended, the dates of attendance, and any degrees
20 received.

21 (b) A list of professional licenses or designations held by
22 the athlete agent, including the date received and the conferring
23 authority.

24 (c) His or her special training or experience in subjects
25 relative to the ability to serve as an athlete agent.

1 (d) His or her employment history including the job title,
2 date of employment, job description, and the name, address, and
3 telephone number of each employer.

4 (e) The name of a professional sports team in which an ath-
5 lete agent, or the family members or affiliates of the athlete
6 agent, has an ownership interest.

7 (f) A record of any sanctions issued to, or disciplinary
8 actions taken against, the athlete agent, an athlete, an institu-
9 tion of higher education, or a professional sport team as a
10 result of the conduct of the athlete agent.

11 (g) A record of all misdemeanor and felony convictions of
12 the athlete agent.

13 (2) An athlete agent who has authority or seeks authority to
14 dispose, encumber, or invest any of the assets of an athlete
15 shall file with the department a disclosure statement in addition
16 to the disclosure statement provided for in subsection (1) which
17 contains all of the following:

18 (a) The athlete agent's experience in business management,
19 investing or investment counseling, brokerage services, or other
20 achievements demonstrative of the athlete agent's ability to
21 render advice regarding the management or investment of the
22 athlete's earnings.

23 (b) A description of any bankruptcy, receivership, or insol-
24 vency proceedings within the 10 years immediately preceding the
25 date of the disclosure statement in which the athlete agent has
26 been involved as a debtor.

1 (c) The name of any person in which the athlete agent,
2 family member of the athlete agent, or any business affiliate of
3 the athlete agent has more than a 5% ownership interest.

4 (3) An athlete agent shall file an updated disclosure state-
5 ment with the department within 30 days of a change in the infor-
6 mation required under subsection (1)(c).

7 (4) Before entering into negotiations for an agent contract,
8 an athlete agent shall give to the prospective client a copy of
9 the current disclosure statement on file with the department.

10 Sec. 15. (1) An athlete agent shall file with the depart-
11 ment a copy of each agent contract executed by the athlete agent
12 within 30 days after the contract is signed by the client and pay
13 the contract filing fee set forth in section 7. The written con-
14 tract shall embody all the terms of the agreement between the
15 parties. The purpose of filing the agent contract is only to
16 confirm its existence. The department may disclose the existence
17 of the contract and the names of the contracting parties, but the
18 contents of the agent contract are exempt from disclosure under
19 the freedom of information act, Act No. 442 of the Public Acts of
20 1976, being sections 15.231 to 15.246 of the Michigan Compiled
21 Laws.

22 (2) An athlete agent shall maintain a complete record of all
23 agent contracts and financial transactions involving those con-
24 tracts and shall permit the department to inspect those books and
25 records during customary business hours upon request.

26 (3) An athlete agent shall not do any of the following:

1 (a) Induce a student athlete to enter into an agent contract
2 before the student athlete's eligibility for collegiate athletics
3 expires except in the case of a student who has already filed a
4 notice of ineligibility.

5 (b) Enter into an agreement in which the athlete agent
6 offers anything of value to an employee of an institution of
7 higher education in return for the referral of a student athlete
8 by that employee.

9 (c) Commit fraud, deception, or make a false statement or
10 representation designed to deceive or persuade an athlete to sign
11 an agent contract or to agree to any terms within or outside the
12 agent contract.

13 (d) Falsify any document or application required under this
14 act.

15 Sec. 17. (1) A license issued under this act shall be valid
16 for a period of 3 years and shall expire on March 31. A license
17 shall lapse on April 1, and an individual whose license has
18 lapsed shall not engage in any activity requiring licensure under
19 this act until the department issues a current license.

20 (2) An athlete agent who renews within 60 days after the
21 expiration of a license may be relicensed upon filing all infor-
22 mation required for renewal and paying the late renewal penalty
23 set forth in section 7. A licensee whose license has lapsed for
24 more than 60 days after expiration shall be required to apply as
25 a new licensee and comply with all requirements of this act for
26 new applicants.

1 Sec. 19. The department may promulgate rules pursuant to
2 the administrative procedures act of 1969, Act No. 306 of the
3 Public Acts of 1969, being sections 24.201 to 24.328 of the
4 Michigan Compiled Laws, to implement this act.

5 Sec. 21. (1) The department shall review the operations of
6 licensees or individuals not licensed under this act who are
7 allegedly acting as athlete agents and shall investigate com-
8 plaints received. The department may initiate contested case
9 proceedings based on the findings of a department investigation.

10 (2) The department may issue a cease and desist order to any
11 person determined by the department to be either of the
12 following:

13 (a) Acting as an athlete agent without a license issued
14 under this act.

15 (b) A licensee acting in violation of this act or rules
16 promulgated under this act.

17 (3) After the issuance of a formal complaint by the depart-
18 ment, a matter shall be processed in accordance with the adminis-
19 trative procedures act of 1969, Act No. 306 of the Public Acts of
20 1969, being sections 24.201 to 24.328 of the Michigan Compiled
21 Laws. Based upon findings of fact and conclusions of law pro-
22 vided by an administrative law examiner, the department shall
23 determine whether a violation of this act or the rules promul-
24 gated under this act has occurred and shall determine the final
25 disciplinary action to be taken.

1 (4) An authorized employee or agent of the department may
2 represent the department in any contested case hearing held
3 pursuant to Act No. 306 of the Public Acts of 1969.

4 Sec. 23. The department may assess 1 or more of the follow-
5 ing penalties against a person who violates this act or a rule
6 promulgated under this act:

7 (a) Revocation of a license.

8 (b) Suspension of a license.

9 (c) Imposition of a civil fine of up to \$10,000.00 for each
10 offense.

11 (d) Denial, for a specified time, of a license or of the
12 renewal of a license.

13 (e) Restitution.

14 (f) Issuance of a license with special conditions, limita-
15 tions, or requirements.

16 (g) Issuance of a written reprimand or letter of censure as
17 a part of the permanent record of a licensee. However, the final
18 order shall stipulate a time following which a person may peti-
19 tion the department to remove the reprimand or censure from the
20 file.

21 (h) Imposition of a requirement that the bond required by
22 this act be increased and maintained for a specific period of
23 time.

24 Sec. 25. (1) An individual who does either or both of the
25 following is guilty of a misdemeanor punishable by imprisonment
26 for not more than 90 days or a fine of not more than \$25,000.00:

1 (a) Acts as or offers to act as an athlete agent without a
2 license issued under this act.

3 (b) Interferes with, impedes, or obstructs an investigation
4 conducted by the department under this act.

5 (2) The department or the department of attorney general may
6 petition the circuit court to issue a subpoena which shall
7 require the person subpoenaed to appear or produce relevant docu-
8 mentary material for examination during the conduct of an inves-
9 tigation or at a proceeding conducted by the department under the
10 administrative procedures act of 1969, Act No. 306 of the Public
11 Acts of 1969, being sections 24.201 to 24.328 of the Michigan
12 Compiled Laws.

13 (3) The department or the department of attorney general may
14 petition the circuit court for injunctive relief or other reme-
15 dies at law to enforce orders of the department, this act, and
16 rules promulgated under this act.

17 Sec. 27. A person who engages in business as an athlete
18 agent shall not bring or maintain an action in a court in this
19 state for the collection of money or compensation for the per-
20 formance of an act which is related to the business of an athlete
21 agent or for the enforcement of an agent contract entered into
22 after April 1, 1992 without alleging and proving that the person
23 was licensed under this act during the entire performance of the
24 act or contract.

25 Sec. 29. This act shall take effect April 1, 1992.