



**House
Legislative
Analysis
Section**

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REGULATE ATHLETES' AGENTS

House Bill 4400

Sponsor: Rep. Michael J. Bennane

House Bill 4436

Sponsor: Rep. Kirk A. Profit

Committee: Judiciary

Complete to 9-23-93

A SUMMARY OF HOUSE BILLS 4400 AND 4436 AS INTRODUCED 3-2-93

House Bill 4436 would create the Athlete Agent Licensing Act, and would prohibit someone from acting or offering to act as an athlete agent or athlete agent firm without a license from the Department of Commerce. 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, as would be an attorney rendering legal advice on a sports contract if the attorney did not represent the athlete in negotiating the contract. The bill would take effect April 1, 1994. Further details follow.

Minimum requirements, disclosures. To be licensed as an athlete agent, an individual would have to be a legal adult of good moral character, and could not have engaged in conduct that led to a current 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 three athletes (if any) for whom the applicant had acted as an athlete agent, the names of any professional sports teams with whom the applicant was affiliated, misdemeanor and felony convictions, and 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, the date of any bankruptcy or receivership, 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. The disclosure statement would have to be given to an athlete at least seven business days before the date of execution of an agent contract.

Licensure requirements for firms would be similar to those for individuals: a \$25,000 cash bond would be required, and each owner (including any shareholder owning at least ten percent of the stock), officer, and partner would have to be of good moral character.

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A firm would have to designate an office manager licensed as an athlete agent. Within 15 days after a change in organization, all licensure requirements for the new entity would have to be met. If a designated athlete agent left a firm or managerial position, the firm would designate another licensed athlete agent and notify the department within 15 days after the appointment was made. An athlete agent would notify the department within five business days after leaving a firm or managerial position. Disclosure statements for firms also would be similar to those required of individuals.

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 for a firm, \$500; application processing for an agent, \$200; license fee, per year, \$500; contract filing fee, \$100; late renewal penalty, \$25. 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 or firm's place of business. Each licensed agent would have to carry and produce upon demand a pocket card provided by the department.

Prohibitions. A licensee 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.

Investigations, penalties. The Department of Commerce would have to review the operations of licensees and of unlicensed people allegedly acting as athlete agents, and investigate complaints. It could initiate contested case proceedings based on findings of an investigation. The department, faced with violations, would be authorized to issue cease and desist orders, 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, and increase the amount of bond required.

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 4400 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 a professional sports services contract. The bill would establish civil remedies and criminal penalties for violations. It would take effect April 1, 1994. A more detailed description follows.

Disclosures, inspections. At least seven days before the date of execution of an agent contract, 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 to be required under House Bill 4436. 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 language which the athlete spoke fluently, or, for multi-lingual athletes, the language of the athlete's choice. A copy of the proposed contract would be provided to the athlete at least seven business days before the date of execution of the contract. The contract would have to outline the agent's services and compensation as prescribed by the bill.

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. 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. At the time of execution of a contract, an agent would give an athlete a copy of the contract with an attached disclosure statement.

Within three days after execution of a contract an agent would have to give an athlete a copy of the contract and a statement of the amount and timing of all compensation the agent is to receive as a result of negotiating a professional sports services 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.