



Romney Building, 10th Floor  
Lansing, Michigan 48909  
Phone: 517/373-6466

## **ATHLETE AGENTS: PROHIBIT TRESPASSING ON COLLEGE AND UNIVERSITY GROUNDS**

**House Bills 5861 and 5862 as introduced  
First Analysis (9-17-98)**

**Sponsor: Rep. Kirk Profit  
Committee: Colleges and Universities**

### ***THE APPARENT PROBLEM:***

Though the primary purpose of the state's colleges and universities is to educate and prepare students to engage in a wide-variety of careers and professions, sports programs are also seen as an important part of the college experience. For many student athletes, a sports scholarship may be the means to defray the costs of a college education, or may be seen as a stepping stone into professional sports. For the educational institution, a sports program can be an additional source of revenue through tournament revenues, alumni donations, and increased enrollment due to the exposure that the school receives through participation in intercollegiate sports, as well as adding to the enjoyment of the college experience of students, faculty, and community members who come to the sporting events to watch their student athletes compete. Unfortunately, the actions of athlete agents and sports boosters that violate athletic association prohibitions on giving gifts or money to student athletes can cause a student athlete to lose his or her scholarship and subject the institution to possible fines and sanctions.

Sanctions against a student athlete or an institution can have serious ramifications. For instance, the loss of a key player due to suspension because of violating a National Collegiate Athletic Association (NCAA) rule, other athletic association rules, or conference rules against accepting gifts or of signing contracts while still eligible to play college sports has led to teams losing games, having to forfeit games (which has in turn resulted in the team's disqualification from tournament play and loss of tournament revenue), and fines and sanctions being levied against a college. In one recent incident, even though a university was not found culpable by the NCAA, the university's investigation into a charge of players illegally receiving gifts from an agent cost the university \$400,000.

In an attempt to discourage athlete agents from inducing student athletes to violate NCAA and other association and conference rules, 27 states have enacted athlete agent legislation. The legislation varies greatly from state to state, with differences not only in definitions, but also registration requirements and penalties. Where most states, including Michigan, provide for criminal penalties, several states have adopted civil penalties that allow colleges and universities to bring a civil suit to recover damages that an institution incurred because of an agent interfering with student athletes. Currently, the Michigan Penal Code prohibits an athlete agent from inducing a student athlete to enter into an agent contract or professional sport services contract before the student's eligibility for college sports expires, or to give or offer anything of value to a college employee in return for a referral of a student athlete. Fines can range from up to \$50,000 and can include up to a year in jail. Public Act 477 of 1988 also prohibits any person from giving gifts or money to a student athlete or his or her family members as an inducement to secure the student athlete's application, enrollment, or attendance at a particular college or university in order to participate in an athletic program, or to induce, encourage, or reward the student athlete for participation in an intercollegiate sporting event, contest, exhibition, or program. Public Act 477 also prohibits a student athlete or his or her family members from receiving gifts or money as an inducement to attend a particular college or university or for participating in sports events and programs. Fines also can be as high as \$50,000 and can include up to a year in jail.

Despite current prohibitions against certain actions by athlete agents, abuses still occur and some people feel that stronger deterrents are needed. Earlier this year, House Bill 5511, which would allow public colleges

**House Bills 5861 and 5862 (9-17-98)**

and universities in Michigan to bring a civil suit against an athlete agent or other person, such as a sports booster, to recover damages, was passed by the House of Representatives and is currently awaiting Senate committee action. (For more information, see the House Legislative Analysis Section's analysis on HB 5511 dated 3-13-98.) Some people would also like to see more power given to colleges and universities to ban athlete agents who are attempting to engage in illegal activities from their campuses. Therefore, legislation has been offered to require that athlete agents have the permission of a college or university to enter a college campus or face trespassing charges.

### ***THE CONTENT OF THE BILLS:***

The bills would make trespassing on the grounds of a college or university in the state by an athlete agent a misdemeanor. Specifically, the bills would do the following:

House Bill 5861. Currently, the Michigan Penal Code (MCL 750.411e) prohibits an athlete agent from inducing "a student athlete to enter into an agent contract or professional sport services contract before the student athlete's eligibility for collegiate athletics expires" or to give, offer, or promise anything of value to an employee of a college or university in return for the referral of a student athlete by that employee. "Institution of higher education" is currently defined under the code as either a public or private college or university. A violator is guilty of a misdemeanor. Fines can range from up to \$50,000 or three times the amount given, offered, or promised as an inducement to a student athlete, or three times the value of the agreement entered into with a college or university employee, whichever is greater. In addition, the agent could be sentenced to a year in jail in lieu of a fine, or receive both.

The bill would amend the code by adding that interfering or attempting to interfere with the prospective advantage accorded an institution of higher education by virtue of its relationship with an intercollegiate athletics governing organization by promising or providing any improper gift or service to a student athlete, a prospective student athlete, or the immediate family of a student athlete or of a prospective student athlete would also be considered a prohibited act on the part of an athlete agent. "Improper gift or service" would be defined as any gift or service that student athletes are prohibited from accepting according to the rules of the college or university. "Prospective student athlete" would mean

an individual who was being recruited to be a student athlete. (The bill would not define "prospective advantage.") The penalty for a violation of the bill would be the same as for other prohibited acts by athlete agents.

The bill would also add that an athlete agent who willfully trespassed by entering or remaining on the property of a college or university without that institution's authority or permission would be guilty of a misdemeanor punishable by imprisonment for up to one year or a fine up to \$50,000, or both.

House Bill 5862 would amend Public Act 80 of 1905 (MCL 19.142), which regulates the "care, order, and preservation of buildings or property dedicated and appropriated to the public use and the conduct of those coming upon the property thereof", to specify that trespassing on public college or university property by an athlete agent would be governed under the new section of the Michigan Penal Code proposed by House Bill 5861.

### ***FISCAL IMPLICATIONS:***

The House Fiscal Agency reports in a fiscal note dated 6-15-98 that House Bill 5861 could result in increased costs to local governments due to prosecution and incarceration of athlete agents charged with trespassing. The bill could also result in the possibility of increased local revenue from any fine levied. The bill would not have a fiscal impact on state government.

In a fiscal note dated 9-15-98, the House Fiscal Agency reports that House Bill 5862 would have no local or state fiscal impact.

### ***ARGUMENTS:***

#### ***For:***

Though certain activities by athletic agents are prohibited and punishable under Michigan law, abuses still continue. Even if a college or university is found not to have been involved with the violations, sanctions against a student athlete can still cost the institution thousands or even millions of dollars. For instance, investigations into an alleged incident can run into the tens of thousands. In one incident, a University of Massachusetts basketball player signed a contract with an agent before his eligibility to play college ball expired. Under NCAA rules (which member colleges and universities agree to abide by), the player was therefore no longer eligible to legally

play college basketball. The university was forced to forfeit the games that the player had participated in after signing the contract, which resulted in the team being disqualified from the semi-final competition. The university had to pay back its share of the NCAA "Final Four" tournament revenue it had received since it was "technically" no longer qualified to be in the tournament. Since revenue from tournaments and bowl games can total in the millions, a violation involving even one student athlete can significantly affect a university's sports program and its funding.

Reportedly, unscrupulous athletic agents are often known to university and college athletic officials, but the school officials have no authority to ban such persons from their campuses. Under the bills, officials could deny or grant permission to an athlete agent to enter a college campus. An athlete agent entering a campus without prior permission could be removed and charged with trespass. The fine imposed by House Bill 5861 should be an effective deterrent for trespassers and so would afford colleges and universities a new tool for protecting student athletes from unscrupulous athlete agents.

#### ***Against:***

House Bill 5861 as written is very broad and so would pose enforcement difficulties. For instance, an athlete agent who interfered with the prospective advantage that a college or university had with a student athlete by providing or promising an improper gift or service would be subject to a fine of up to \$50,000 and possible jail time. However, the term "prospective advantage" is not defined in the bill, and the bill would allow colleges and universities to set their own definitions for "improper gift or service". Conceivably, what would then be legal at one institution could be illegal at the next. It should be the responsibility of the legislature to clearly define terms, and some question the legality of giving authority to colleges and universities to define a term that then would be used to decide if someone is guilty of a crime.

More importantly, the bill would be extremely difficult to enforce, and creates the possibility for abuse. For example, the bill is silent as to who would grant permission to an athlete agent to enter the grounds of a campus, or if the permission or lack of it would be for a set time (such as a school year) or for each time an agent wished to enter a campus. Would an agent have to call the athletic director of a school, the university president, or the chief of police to gain permission to enter a campus? Would a ban (or even

permission) only be for when an agent was acting in the capacity of an athlete agent, or would it encompass every activity that a person who was an athlete agent sought to do on a college campus? For example, if an agent's son or daughter attended a Michigan college or university, would the agent need permission to visit his or her child? Would permission be needed to golf at a university golf course, to attend a wedding reception at a college conference center or banquet hall, or to seek medical treatment at a university hospital or clinic? In the case of some urban campuses, it can be difficult to avoid campus areas in the normal act of traversing the city in which the campus is located.

Further, some people have expressed concern over the constitutionality of banning a person from public grounds, such as a public university. Others believe that current laws already exist to deal with the problem of athlete agents (Michigan Penal Code, MCL 750.411e) and boosters and students and their families (Public Act 477 of 1988, MCL 390.1501 et al.) who engage in conduct that is illegal. Perhaps the problem lies with inconsistent enforcement of existing laws and not with inadequate laws.

#### ***POSITIONS:***

The President's Council -- State Universities of Michigan supports the bill in principle. (9-16-98)

Analyst: S. Stutzky

---

■ 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.