

SENATE BILL No. 581

June 12, 2007, Introduced by Senators WHITMER, PAPPAGEORGE, SCHAUER, CHERRY, BASHAM and JACOBS and referred to the Committee on Judiciary.

A bill to regulate certain contracts and transactions involving athlete agents and student-athletes in this state; to provide for licensure and regulation of certain athlete agents; to provide for certain powers and duties of certain state agencies; to require certain disclosures; to create certain causes of action; to provide for remedies and penalties; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

3 Sec. 3. As used in this act:

4 (a) "Agency contract" means an agreement in which a student-
5 athlete authorizes a person to negotiate or solicit on behalf of

1 the student-athlete a professional sports-services contract or an
2 endorsement contract.

3 (b) "Athlete agent" means an individual who enters into an
4 agency contract with a student-athlete or, directly or indirectly,
5 recruits or solicits a student-athlete to enter into an agency
6 contract and includes an individual who represents to the public
7 that he or she is an athlete agent. Athlete agent does not include
8 a spouse, parent, sibling, grandparent, or guardian of the student-
9 athlete or an individual acting solely on behalf of a professional
10 sports team or professional sports organization.

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

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

20 (e) "Department" means the department of labor and economic
21 growth.

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

27 (g) "Intercollegiate sport" means a sport played at the

1 collegiate level for which eligibility requirements for
2 participation by a student-athlete are established by a national
3 association for the promotion or regulation of collegiate
4 athletics.

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

9 (i) "Professional sports-services contract" means an agreement
10 under which an individual is employed, or agrees to render
11 services, as a player on a professional sports team, with a
12 professional sports organization or as a professional athlete.

13 (j) "Record" means information that is inscribed on a tangible
14 medium or that is stored in an electronic or other medium and is
15 retrievable in perceivable form.

16 (k) "State" means a state of the United States, the District
17 of Columbia, Puerto Rico, the United States Virgin Islands, or any
18 territory or insular possession subject to the jurisdiction of the
19 United States.

20 (l) "Student-athlete" means an individual who engages in, is
21 eligible to engage in, or may be eligible in the future to engage
22 in, any intercollegiate sport. An individual permanently ineligible
23 to participate in a particular intercollegiate sport is not a
24 student-athlete for purposes of that sport.

25 Sec. 5. (1) Except as otherwise provided in subsection (2), an
26 individual may not act as an athlete agent in this state without
27 holding a license issued under this act.

1 (2) Before being issued a license, an individual may act as an
2 athlete agent in this state for all purposes except signing an
3 agency contract under the following circumstances:

4 (a) A student-athlete or another person acting on behalf of
5 the student-athlete initiates communication with the individual.

6 (b) Within 7 days after an initial act as an athlete agent,
7 the individual submits an application for licensure as an athlete
8 agent.

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

12 (4) By acting as an athlete agent in this state, a nonresident
13 individual appoints the department as the individual's agent for
14 service of process in any civil action in this state related to the
15 individual's acting as an athlete agent in this state.

16 (5) The department may issue subpoenas for any material that
17 is relevant to the administration of this act.

18 Sec. 7. (1) An applicant for licensure shall submit an
19 application to the department on a form prescribed by the
20 department. The application must be in the name of an individual
21 and, except as otherwise provided under this act, signed or
22 otherwise authenticated by the applicant under penalty of perjury
23 and state or contain the following:

24 (a) The name of the athlete agent and the address of the
25 athlete agent's principal place of business.

26 (b) The name of the athlete agent's business or employer, if
27 applicable.

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

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

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

10 (f) The name, sport, and last known team for each individual
11 for whom the athlete agent acted as an athlete agent during the 5
12 years preceding the date of the 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 corporation,
15 the partners, members, officers, managers, associates, or profit-
16 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 greater.

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

23 (i) Whether there has been any administrative or judicial
24 determination that the athlete agent or any person named under
25 subdivision (g) has made a false, misleading, deceptive, or
26 fraudulent representation.

27 (j) Any instance in which the conduct of the athlete agent or

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

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

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

12 (2) An individual who has submitted an application for, and
13 holds a certificate of, registration or licensure as an athlete
14 agent in another state may submit a copy of the application and
15 certificate in lieu of submitting the application under subsection
16 (1).

17 (3) The department shall accept the application and the
18 certificate from the other state as an application for licensure in
19 this state if the application to the other state is in conformance
20 with the following:

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

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

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

2 Sec. 9. (1) Except as otherwise provided in subsection (2),
3 the department shall issue a license to an individual who complies
4 with section 7.

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

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

13 (b) Made a materially false, misleading, deceptive, or
14 fraudulent representation in the application.

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

17 (d) Engaged in conduct prohibited by this act.

18 (e) Had a registration or licensure as an athlete agent
19 suspended, revoked, or denied or has been refused renewal of
20 registration or licensure as an athlete agent in any state.

21 (f) Engaged in conduct the consequence of which was that a
22 sanction, suspension, or declaration of ineligibility to
23 participate in an interscholastic or intercollegiate athletic event
24 was imposed on a student-athlete or educational institution.

25 (g) Engaged in conduct that the department determines
26 significantly adversely reflects on the applicant's credibility,
27 honesty, or integrity.

1 (3) In making a determination under subsection (2), the
2 department shall consider how recently the conduct occurred, the
3 nature of the conduct and the context in which it occurred, and any
4 other relevant conduct of the applicant.

5 (4) An athlete agent may apply to renew a license by
6 submitting an application for renewal in a form prescribed by the
7 department. The application for renewal must be signed by the
8 applicant under penalty of perjury and must contain current
9 information on all matters required in an original application.

10 (5) An individual who has submitted an application for renewal
11 of registration or licensure in another state, in lieu of
12 submitting an application for renewal in the form prescribed in
13 subsection (4), may file a copy of the application for renewal and
14 a valid certificate of registration or licensure from the other
15 state. The department shall accept the application for renewal from
16 the other state as an application for renewal in this state if the
17 application to the other state was submitted in the other state
18 within 6 months preceding the filing in this state and the
19 applicant certifies that the information contained in the
20 application for renewal is current, contains information
21 substantially similar to or more comprehensive than that required
22 in an application for renewal submitted in this state, and was
23 signed by the applicant under penalty of perjury.

24 (6) A license or a renewal of a license is valid for 2 years.

25 Sec. 11. (1) The department may suspend, revoke, or refuse to
26 renew a license for conduct that would have justified such action
27 under section 9(2).

1 (2) The department may deny, suspend, revoke, or refuse to
2 renew a license only after proper notice and an opportunity for an
3 administrative hearing under the administrative procedures act of
4 1969, 1969 PA 306, MCL 24.201 to 24.328.

5 (3) The department may issue a temporary license while an
6 application for initial licensure or renewal licensure is pending.

7 (4) An application for initial or renewal licensure shall be
8 accompanied by a fee in the following amount:

9 (a) \$300.00 for an initial application.

10 (b) \$300.00 for an application based upon a certificate of
11 registration or licensure issued by another state.

12 (c) \$75.00 for an application for renewal of licensure.

13 (d) \$75.00 for an application for renewal based upon an
14 application for renewal of registration or licensure submitted in
15 another state.

16 Sec. 13. (1) An agency contract must be in a record and signed
17 or otherwise authenticated by the parties.

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

20 (a) The amount and method of calculating the consideration to
21 be paid by the student-athlete for services to be provided by the
22 athlete agent under the contract and any other consideration the
23 athlete agent has received or will receive from any other source
24 for entering into the contract or for providing the services.

25 (b) The name of any person not listed in the written
26 disclosure required under section 5 who will be compensated as a
27 result of the student-athlete signing the agency contract.

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

3 (d) A description of the services to be provided to the
4 student-athlete.

5 (e) The duration of the agency contract.

6 (f) The date of execution.

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

10 "WARNING TO STUDENT-ATHLETE IF YOU SIGN THIS CONTRACT:

11 (1) You may lose your eligibility to compete as a student-
12 athlete in your sport.

13 (2) If you have an athletic director, within 72 hours after
14 entering into this contract or before your next scheduled athletic
15 event, whichever occurs first, both you and your athlete agent must
16 notify your athletic director.

17 (3) You may cancel this contract within 14 days after signing
18 it. Cancellation of this contract may not reinstate your
19 eligibility to compete as a student-athlete.".

20 (4) An agency contract that does not substantially conform to
21 this section is voidable by the student-athlete. If a student-
22 athlete voids an agency contract, the student-athlete is not
23 required to pay any consideration under the contract or to return
24 any consideration received from the athlete agent to induce the
25 student-athlete to enter into the contract.

26 (5) The athlete agent shall give a record of the signed or
27 otherwise authenticated agency contract to the student-athlete at

1 the time of execution.

2 Sec. 15. (1) Within 72 hours after entering into an agency
3 contract or before the next scheduled athletic event in which the
4 student-athlete may participate, whichever occurs first, the
5 athlete agent shall give notice in a record of the existence of the
6 agency contract to the athletic director of the educational
7 institution at which the student-athlete is enrolled or the athlete
8 agent has reasonable grounds to believe the student-athlete intends
9 to enroll.

10 (2) Within 72 hours after entering into an agency contract or
11 before the next athletic event in which the student-athlete may
12 participate, whichever occurs first, the student-athlete shall
13 inform the athletic director of the educational institution at
14 which the student-athlete is enrolled that he or she has entered
15 into an agency contract.

16 Sec. 17. (1) A student-athlete may cancel an agency contract
17 by giving notice of the cancellation to the athlete agent in a
18 record within 14 days after the agency contract is signed.

19 (2) The right to cancel an agency contract described in
20 subsection (1) cannot be waived by the student-athlete.

21 (3) If a student-athlete cancels an agency contract, the
22 student-athlete is not required to pay any consideration under the
23 contract or to return any consideration received from the athlete
24 agent to induce the student-athlete to enter into the agency
25 contract.

26 Sec. 19. (1) An athlete agent shall retain the following
27 records for a period of 5 years:

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

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

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

7 (2) Records required to be retained under subsection (1) are
8 open to inspection by the department during normal business hours.

9 Sec. 21. (1) An athlete agent, with the intent to induce a
10 student-athlete to enter into an agency contract, shall not do any
11 of the following:

12 (a) Give any materially false or misleading information or
13 make a materially false promise or representation.

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

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

18 (2) An athlete agent shall not intentionally do any of the
19 following:

20 (a) Initiate contact with a student-athlete unless licensed
21 under this act or under the circumstances provided for in section
22 5(2).

23 (b) Refuse to permit the inspection of or fail to retain the
24 records required to be retained by section 19.

25 (c) Fail to become licensed under section 5.

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

1 (e) Predate or postdate an agency contract.

2 (f) Fail to notify a student-athlete, before the student-
3 athlete signs or otherwise authenticates an agency contract for a
4 particular sport, that the signing or authentication may make the
5 student-athlete ineligible to participate as a student-athlete in
6 that sport.

7 Sec. 23. An athlete agent who violates section 21 is guilty of
8 a misdemeanor punishable by imprisonment for not more than 93 days
9 or a fine of not more than \$1,000.00, or both.

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

15 (2) Damages of an educational institution under subsection (1)
16 include losses and expenses incurred caused by the conduct of an
17 athlete agent or former student-athlete that was in violation of
18 this act. The losses include any penalty, disqualification, or
19 suspension of the educational institution from participation in
20 athletics by a national association for the promotion and
21 regulation of athletics, by an athletic conference, or by
22 reasonable self-imposed disciplinary action taken to mitigate
23 sanctions likely to be imposed by such an organization.

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

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

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

5 Sec. 27. The department, after notice and an opportunity for
6 an administrative hearing under the administrative procedures act
7 of 1969, 1969 PA 306, MCL 24.201 to 24.328, may assess an
8 administrative fine not to exceed \$25,000.00 for a violation of
9 this act.

10 Sec. 29. In applying and construing this uniform act,
11 consideration must be given to the need to promote uniformity of
12 the law with respect to its subject matter among states that enact
13 it.

14 Sec. 31. The provisions of this act governing the legal
15 effect, validity, or enforceability of electronic records or
16 signatures, and of contracts formed or performed with the use of
17 such records or signatures, shall conform to the requirements of
18 section 102 of the electronic signatures in global and national
19 commerce act, 15 USC 7002.

20 Sec. 33. Section 411e of the Michigan penal code, 1931 PA 328,
21 MCL 750.411e, is repealed effective January 1, 2008.

22 Sec. 35. This act takes effect January 1, 2008.