

HOUSE BILL No. 4804

May 10, 1989, Introduced by Reps. Bennane, Palamara, Perry Bullard, DeMars, Hertel and Emerson and referred to the Committee on Judiciary.

A bill to prescribe certain standards in contracts between athletes and agents; to prescribe the 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 "professional athlete agent contract act".

3 Sec. 3. As used in this act:

4 (a) "Agent contract" means any contract or agreement pursu-
5 ant to which a person authorizes an athlete agent to negotiate or
6 solicit on behalf of the person with 1 or more professional sport
7 teams for an endorsement contract, licensing contract, personal
8 appearance contract, or a professional sports services contract.
9 An agent contract includes any agreement which authorizes an
10 athlete agent to invest or manage in any manner the money earned

1 by the person as a professional athlete or as a result of the
2 person's status as a professional athlete.

3 (b) "Athlete agent" means a person who, directly or indi-
4 rectly and for valuable consideration or remuneration of any
5 kind, recruits or solicits a person to enter into an agent
6 contract. Athlete agent does not include a member of a student
7 athlete's immediate family.

8 (c) "Athlete agent firm" means an individual, sole proprie-
9 torship, partnership, association, corporation, or other legal
10 entity which employs 1 or more individuals to act as an athlete
11 agent on behalf of the entity.

12 (d) "Department" means the department of licensing and
13 regulation.

14 (e) "Endorsement contract" means an agreement pursuant to
15 which a professional athlete is employed or receives remuneration
16 to provide an endorsement of, or testimonial promoting of, a
17 product or service.

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

23 (g) "Institution of higher education" means a public or pri-
24 vate college or university. Institution of higher education
25 includes a community college.

26 (h) "Licensee" means a person who is licensed under this
27 act.

1 (i) "Licensing contract" means an agreement pursuant to
2 which a professional athlete is employed or receives remuneration
3 for authorizing another person to use his or her name or image in
4 connection with a product or service.

5 (j) "Person" means an individual, sole proprietorship, part-
6 nership, association, corporation, or other legal entity.

7 (k) "Personal appearance contract" means an agreement pursu-
8 ant to which a professional athlete is employed or receives remu-
9 nation to deliver a speech or personally appear at an event or
10 function.

11 (l) "Professional athlete" means an individual employed or
12 receiving remuneration as a player on a professional sports
13 team.

14 (m) "Professional sport services contract" means an agree-
15 ment pursuant to which a person is employed or receives remunera-
16 tion as a player on a professional sport team.

17 (n) "Student athlete" means a person who engages in, is eli-
18 gible to engage in, or may be eligible to engage in any intercol-
19 legiate sporting event, contest, exhibition, or program.

20 Sec. 5. (1) Subject to section 21, an agent contract
21 entered into in violation of this act or not in conformance with
22 this act is voidable at the option of the professional athlete.

23 (2) An athlete agent has a fiduciary responsibility to the
24 professional athlete if the athlete agent has discretion to dis-
25 pose, encumber, or invest any of the assets of the professional
26 athlete that are earned pursuant to an agent contract.

1 Sec. 7. (1) An athlete agent shall disclose, in a manner
2 described in section 9(2), any person in which he or she has an
3 ownership interest of more than 5%.

4 (2) If the athlete agent has an ownership interest in a
5 person of more than 5%, then he or she shall disclose, in a
6 manner described in section 9(2), all of the following in rela-
7 tion to that person:

8 (a) Any indebtedness of more than \$5,000.00.

9 (b) Membership on the board of directors.

10 (c) Appointment or election as an officer.

11 (d) Receipt of more than \$1,000.00 per year.

12 (3) Compensation or income received from, and control exer-
13 cised by, family members, affiliates, and persons with whom the
14 athlete agent has an ownership relationship in any business shall
15 be attributed to the athlete agent for purposes of subsections
16 (1) and (2).

17 (4) A professional athlete with whom an athlete agent has
18 entered into an agent contract may audit the books and records of
19 the athlete agent that are related to the athlete during normal
20 business hours upon 48 hours' written notice to the athlete
21 agent.

22 Sec. 9. (1) Before entering into negotiations for an agent
23 contract, an athlete agent shall furnish to the person seeking to
24 become a professional athlete a document entitled "disclosure
25 statement".

26 (2) The disclosure statement shall contain all of the
27 following, in relation to the athlete agent:

1 (a) His or her educational background, including schools and
2 colleges attended, the dates of attendance, and any degrees
3 received.

4 (b) A list of professional seminars and programs attended by
5 the athlete agent, including the dates of attendance, the number
6 of hours of instruction, the subject matter of the seminar or
7 program, and the sponsor.

8 (c) A list of professional licenses or designations held by
9 the athlete agent, including the date received and the conferring
10 authority.

11 (d) His or her experience in business management, invest-
12 ment, investment counseling, brokerage services, or other activi-
13 ties demonstrative of the athlete agent's ability to render
14 advice regarding the management or investment of the professional
15 athlete's earnings.

16 (e) His or her employment history for the preceding 10 years
17 including the job title, date of employment, job description, and
18 the name, address, and telephone number of each employer.

19 (f) The name of any person in which the athlete agent has
20 more than a 5% ownership interest and, if applicable, any infor-
21 mation required to be disclosed pursuant to section 7(1) and
22 (2).

23 (g) A description of any litigation, grievances, or arbitra-
24 tion within the preceding 10 years in which the athlete agent has
25 been involved which relates to his or her business activities as
26 an athlete agent.

1 (h) A description of any bankruptcy, receivership, or
2 insolvency proceedings within the 10 years immediately preceding
3 the date of the disclosure statement in which the athlete agent
4 has been involved as a debtor.

5 (i) A record of any sanctions issued to, or disciplinary
6 actions taken against, the athlete agent, an athlete agent firm,
7 an athlete, an institution of higher education, or a professional
8 sport team as a result of the conduct of the athlete agent.

9 (j) A record of all felony convictions of the athlete
10 agent.

11 (k) A record of all misdemeanor convictions of the athlete
12 agent involving fraud, false pretenses, theft, or embezzlement
13 within the 10 years immediately preceding the date of the disclo-
14 sure statement.

15 (l) A list of all professional athletes with whom the ath-
16 lete agent entered into an agent contract during the 10 years
17 immediately preceding the date of the disclosure statement.

18 Sec. 11. An attorney rendering legal advice to a profes-
19 sional athlete concerning a proposed agent contract is exempt
20 from this act if both of the following circumstances exist:

21 (a) The attorney does not represent the professional athlete
22 in negotiating or soliciting the agent contract.

23 (b) The attorney is compensated solely on an hourly fee
24 basis pursuant to a written retainer agreement.

25 Sec. 13. (1) An agent contract shall be in writing, exe-
26 cuted by the athlete agent and the athlete, and in conformance

1 with section 15. All terms of the agent contract shall be
2 contained in the agent contract.

3 (2) The agent contract shall be written in the professional
4 athlete's first language. As used in this subsection, "first
5 language" means that language which the professional athlete
6 speaks fluently and, if the professional athlete speaks more than
7 1 language, the language of his or her choice.

8 (3) Not less than 7 business days before the date of planned
9 execution of the agent contract, the athlete agent shall provide
10 a copy of the proposed agent contract and the disclosure state-
11 ment required under section 9 to the professional athlete and to
12 his or her parents or legal guardian, if the professional athlete
13 is less than 21 years of age.

14 (4) A professional athlete may cancel the agent contract
15 without cause not more than 3 business days after the date of
16 execution of the agent contract. An athlete agent shall not
17 charge the athlete for any goods provided, services rendered, or
18 expenses expended on behalf of the professional athlete during
19 that 3-day period.

20 Sec. 15. At a minimum, all of the following shall be con-
21 tained in an agent contract:

22 (a) A provision in 12-point boldface type entitled "notice
23 of cancellation" stating that a professional athlete has
24 3 business days after the date of execution to cancel the agent
25 contract without cause. This provision shall also include a dec-
26 laration for the professional athlete to sign and date indicating
27 his or her decision to cancel the agent contract.

1 (b) A provision outlining the athlete agent's compensation
 2 that is similar or substantially similar to the following:

3 Agents Hourly Fee 4 (If applicable)		\$_____ per hour
5 Athlete's Total Annual 6 Compensation 7	Agent's Total Fees	% of Total Annual Compensation (if scaled)
8 Less than \$100,000	\$_____	_____ %
9 \$100,000 or more	\$_____	_____ %
10 \$250,000 or more	\$_____	_____ %
11 \$500,000 or more	\$_____	_____ %
12 Athlete's Signing Bonus 13	Agent's Total Fee	% of Total Signing Bonus
14 \$_____	\$_____	_____ %
15 Athlete's Incentive Bonus 16	Agent's Total Fee	% of Total Incentive Bonus
17 \$_____	\$_____	_____ %
18 Athlete's Deferred 19 Compensation	Agent's Total Fee	% of Total Deferred Compensation
20 \$_____	\$_____	_____ %
21 Athlete's Endorsement 22 Contract Compensation	Agent's Total Fee	% of Total Endorse- ment Compensation
23 \$_____	\$_____	_____ %

1 Athlete's Appearance	Agent's Total Fee	% of Total Appearance Compensation
2 Contract Compensation		
3 \$ _____	\$ _____	_____ %
4 Athlete's Licensing	Agent's Total Fee	% of Total Licensing Compensation
5 Contract Compensation		
6 \$ _____	\$ _____	_____ %
7 Miscellaneous	Agent's Total Fee	% of Total Miscellaneous Compensation
8 Compensation		
9 \$ _____	\$ _____	_____ %

10 (c) A provision in 12-point boldface type outlining all of
 11 the following rights of the professional athlete under this act:

12 (i) The ability of the professional athlete to conduct an
 13 audit of the books and records of the athlete agent.

14 (ii) The right of a professional athlete within 2 years of
 15 the date of execution to file a civil action to void the agent
 16 contract due to noncompliance of the agent contract with this act
 17 and the possibility of an award of attorney fees and treble dam-
 18 ages if the professional athlete prevails in the action.

19 (iii) The criminal penalty provisions for violation by the
 20 athlete agent of this act.

21 (d) A certification signed by the athlete agent that all the
 22 information provided in the contract is true and complete to the
 23 best of his or her knowledge.

24 (e) A provision entitled "acknowledgment and receipt" for
 25 the signature of the professional athlete which certifies the
 26 date of receipt of the agent contract.

1 Sec. 17. A copy of the disclosure statement described in
2 section 9 shall be attached to the agent contract at the time a
3 copy of the agent contract is provided to the professional
4 athlete.

5 Sec. 19. (1) An athlete agent who does any of the following
6 is guilty of a misdemeanor punishable by imprisonment for not
7 more than 1 year or by a fine of not more than \$50,000.00, or
8 both:

9 (a) Fails to reduce an agent contract to writing.

10 (b) Fails to include in the agent contract all of the provi-
11 sions outlined in section 15.

12 (c) Makes a material omission or misrepresentation as to
13 information in the disclosure statement required in section 9.

14 (d) Commits fraud, deceit, deception, or makes a false
15 statement or misrepresentation designed to deceive or persuade a
16 professional athlete to sign an agent contract.

17 (2) A prosecution under this act may be brought by the
18 attorney general or a prosecuting attorney.

19 Sec. 21. (1) Not more than 2 years after the date of execu-
20 tion of the agent contract, a professional athlete may bring a
21 civil action to void the agent contract for violation of this
22 act. If an athlete prevails in an action under this section, the
23 court shall award actual attorney fees to the professional
24 athlete.

25 (2) Upon proof of a willful violation of this act by the
26 athlete agent, the court, in an action under subsection (1),
27 shall award to the professional athlete damages equal to 3 times

1 the amount of compensation received by the athlete agent pursuant
2 to the agent contract at the time the action was filed.

3 Sec. 23. (1) If a person engages in conduct prohibited by
4 this act and personal jurisdiction over the person cannot be
5 obtained, that conduct shall be considered the equivalent of
6 appointing the department to be that person's attorney to receive
7 service of process in a noncriminal proceeding involving that
8 conduct against that person, or that person's successor in
9 interest.

10 (2) Service under subsection (1) shall be made by leaving a
11 copy of the process with the director of the department or his or
12 her deputy. The service shall not be effective unless the party
13 initiating the proceeding immediately sends a copy of the process
14 by registered or certified mail to the person at that person's
15 last known address and takes other steps which are reasonably
16 calculated to give actual notice of the proceedings. The party
17 initiating the proceeding shall file an affidavit of compliance
18 with the court hearing the proceeding.