

HOUSE BILL No. 5073

September 21, 1989, Introduced by Reps. Profit, Bennane and DeMars and referred to the Committee on Judiciary.

A bill to license and regulate athlete agents; to prescribe the 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's licensing act".

3 Sec. 2. As used in this act:

4 (a) "Agent contract" means any contract or agreement pursu-
5 ant to which a person authorizes or empowers an athlete agent to
6 negotiate or solicit on behalf of the person with 1 or more pro-
7 fessional sport teams for the employment of the person by a pro-
8 fessional sport team or to negotiate or solicit on behalf of the
9 person for the employment of the person as a professional
10 athlete.

1 (b) "Athlete agent" means a person who, directly or
2 indirectly, recruits or solicits a person to enter into an agent
3 contract or professional sport services contract, or who pro-
4 cures, offers, promises, or attempts to obtain employment for a
5 person with a professional sport team or as a professional
6 athlete. 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 its behalf.

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

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

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

24 (h) "Person" means an individual, sole proprietorship, part-
25 nership, association, corporation, or other legal entity.

26 (i) "Professional sport services contract" means a contract
27 or agreement pursuant to which an individual is employed or

1 agrees to render services as a player on a professional sport
2 team or as a professional athlete.

3 (j) "Student athlete" means an individual who engages in, is
4 eligible to engage in, or may be eligible to engage in any inter-
5 collegiate sporting event, contest, exhibition, or program.

6 Sec. 3. A person shall not act or offer to act as an ath-
7 lete agent or athlete agent firm unless the person is licensed
8 pursuant to this act.

9 Sec. 4. (1) A person applying for a license under this act
10 shall apply to the department on a form provided by the
11 department. The application form shall include information
12 required by this act and any other information considered neces-
13 sary by the department to fulfill its obligations under this
14 act.

15 (2) Fees for licensure and other activities under this act
16 shall be as prescribed in section 76 of the state license fee
17 act, Act No. 152 of the Public Acts of 1979, being section
18 338.2276 of the Michigan Compiled Laws.

19 (3) An individual licensed under this act and an owner,
20 partner, officer, or shareholder owning 10% or more of any stock
21 in an athlete agent firm shall meet all of the following
22 requirements:

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

24 (b) Be of good moral character, as defined and determined in
25 Act No. 381 of the Public Acts of 1974, being sections 338.41 to
26 338.47 of the Michigan Compiled Laws.

1 (c) Not be under sanction or have been a participant in
2 conduct which resulted in the issuing of a current sanction to an
3 athlete, professional sport team, or institution of higher educa-
4 tion by an intercollegiate sports coordinating body or profes-
5 sional sport association.

6 Sec. 5. (1) The department shall issue a license as an ath-
7 lete agent firm to a person who meets all of the following:

8 (a) Has provided the department with the name and address of
9 the applicant firm and the name or names under which it will do
10 business in this state, as well as the location of its business
11 offices in this state.

12 (b) Has provided the department with the name and address of
13 each owner, partner, officer, and shareholder owning 10% or more
14 of any stock in the applicant firm and information establishing
15 to the satisfaction of the department that those individuals meet
16 the requirements of section 4(3).

17 (c) Has provided the department with the name and address of
18 each individual who will be authorized by the applicant firm to
19 act as an athlete agent on its behalf and information establish-
20 ing to the satisfaction of the department that each individual so
21 authorized meets the requirements of section 4(3).

22 (d) Has paid the necessary fees prescribed in section 76 of
23 the state license fee act, Act No. 152 of the Public Acts of
24 1979, being section 338.2276 of the Michigan Compiled Laws.

25 (2) The department shall issue a license as an athlete agent
26 to an individual who meets all of the following:

1 (a) Has provided the department with his or her name and
2 address and information establishing that he or she meets the
3 qualifications of section 4(3).

4 (b) Has provided the department with the name and address of
5 each athlete agent firm with which the individual will be affili-
6 ated, regardless of whether or not the athlete agent firm is
7 located in this state.

8 (c) Has provided evidence of a bond as required by section
9 6.

10 (d) Has received departmental approval of a disclosure
11 statement meeting the requirements of section 7.

12 (e) Has paid the necessary fees prescribed in section 76 of
13 Act No. 152 of the Public Acts of 1979.

14 (3) If an individual or sole proprietorship does not employ
15 or authorize any person other than the individual or sole propri-
16 etor to act on his or her behalf, the individual shall be issued
17 a joint license as an athlete agent and an athlete agent firm.

18 (4) An individual who will be authorized to act on behalf of
19 more than 1 athlete agent firm, or an athlete agent or athlete
20 agent firm operating from more than 1 location in this state
21 shall apply for a duplicate license for each additional athlete
22 agent firm or location. The license shall be conspicuously dis-
23 played in each place of business. Each individual licensee shall
24 carry and produce upon demand a pocket card provided by the
25 department which indicates that the individual is licensed under
26 this act.

1 (5) An athlete agent or athlete agent firm shall notify the
2 department of any of the following changes not later than 30 days
3 after the change occurs:

4 (a) Change of address.

5 (b) A change in the owners, partners, officers, or share-
6 holders of the athlete agent firm.

7 (c) The addition or deletion of athlete agents authorized or
8 employed by an athlete agent firm.

9 (6) If a change requires the issuance of a new license, the
10 licensee shall apply for a new license document.

11 (7) A nonresident of this state may be licensed under this
12 act if the person complies with this act, including all of the
13 following requirements:

14 (a) Files an irrevocable consent to service of process on a
15 form provided by the department. The consent shall be signed by
16 the applicant or by an authorized officer, member, or partner of
17 the applicant and shall be notarized. If the applicant is a cor-
18 poration, the consent shall be accompanied by a certified copy of
19 the resolution of the corporation authorizing the consent. The
20 consent shall indicate that a process or pleading served upon the
21 department shall be sufficient service upon the licensee if the
22 plaintiff simultaneously forwards by certified mail 1 copy of the
23 process or pleading to the business address of the licensee.

24 (b) If the applicant is a foreign corporation, in addition
25 to complying with subdivision (a), filing with the department a
26 copy of the corporation's authorization to do business in this

1 state issued by the corporation and securities bureau of the
2 department of commerce.

3 Sec. 6. (1) Subject to section 12(i), an athlete agent
4 shall provide a cash or surety bond with a principal sum of
5 \$25,000.00, payable to the people of the state of Michigan and
6 conditioned that the individual athlete agent will do all of the
7 following:

8 (a) Comply with this act and rules promulgated under this
9 act.

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

12 (c) Pay all damages occasioned to any person by reason of
13 intentional or unintentional misstatement, misrepresentation,
14 fraud, deceit, or any unlawful or negligent acts, commissions, or
15 omissions of the athlete agent while acting as an athlete agent,
16 or his or her representatives or employees while acting within
17 the scope of their employment, including, but not limited to, a
18 violation of this act and rules promulgated under this act.

19 (2) The bond shall be made upon a form provided by the
20 department. A surety bond shall be written by a company recog-
21 nized and approved by the commissioner of insurance to do busi-
22 ness in this state. A cash bond shall be provided to the depart-
23 ment and deposited with the state treasurer in accordance with
24 the regulations of the department of treasury for the deposit of
25 cash bonds.

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

1 Sec. 7. (1) An athlete agent shall file with the
2 department, on a form provided by the department, a disclosure
3 statement which contains all of the following:

4 (a) The educational background, training, and experience of
5 the athlete agent with respect to practice as and experience
6 related to being an athlete agent.

7 (b) The business name and addresses of any athlete agent
8 firm represented by the athlete agent, and the license number of
9 the athlete agent and athlete agent firm in this or any other
10 state.

11 (c) A record of all felony convictions or misdemeanor con-
12 victions punishable by imprisonment of the athlete agent and each
13 owner, partner, officer, or shareholder of 10% or more of the
14 stock of the athlete agent firm represented by the athlete
15 agent.

16 (d) A record of any sanctions issued to or disciplinary
17 actions taken against the athlete agent, the athlete agent firm,
18 or any athlete, professional sport team, or institution of higher
19 education as a result of the conduct of the athlete agent or the
20 athlete agent firm.

21 (2) An athlete agent shall file an updated disclosure state-
22 ment with the department within 30 days of a change in the infor-
23 mation required under subsection (1)(b) or (c).

24 (3) Before entering into negotiations for an agent contract
25 or professional sport services contract, an athlete agent shall
26 give to the prospective client a copy of the current disclosure
27 statement on file with the department.

1 Sec. 8. (1) An athlete agent firm shall file with the
2 department a copy of each agent contract or professional sport
3 services contract executed by the athlete agent within 30 days
4 after the contract is signed by the client. The contract shall
5 embody all agreements between the parties.

6 (2) An athlete agent firm shall maintain a complete record
7 of all agent contracts and professional sport services contracts
8 and financial transactions involving those contracts and shall
9 permit the department to inspect those books and records during
10 customary business hours upon request.

11 (3) An athlete agent or athlete agent firm shall not do
12 either of the following:

13 (a) Induce a student athlete to enter into an agent contract
14 or professional sport services contract before the student
15 athlete's eligibility for collegiate athletics expires.

16 (b) Enter into an agreement in which the athlete agent
17 offers anything of value to an employee of an institution of
18 higher education in return for the referral of a student athlete
19 by that employee.

20 Sec. 9. (1) Except as otherwise provided in this subsec-
21 tion, a license issued under this act shall be valid for a period
22 of 3 years and shall expire on March 31. However, the initial
23 license issued under this act may be issued for either 1, 2, or
24 3 years in order to provide a balanced amount of renewal licenses
25 in subsequent years.

1 (2) In order to renew a license, an athlete agent or athlete
2 agent firm shall demonstrate to the department that it is in
3 compliance with this act.

4 (3) An athlete agent representing multiple firms or an ath-
5 lete agent firm with multiple business locations shall also apply
6 for renewal of the duplicate licenses issued.

7 (4) An athlete agent or athlete agent firm which renews
8 within 60 days after the expiration of a license may be reli-
9 censed upon filing all information required for renewal and
10 paying the late renewal penalty set forth in section 76 of the
11 state license fee act, Act No. 152 of the Public Acts of 1979,
12 being section 338.2276 of the Michigan Compiled Laws. A licensee
13 whose license has lapsed for more than 60 days after expiration
14 shall be required to apply as a new licensee and comply with all
15 requirements of this act for new applicants and shall demonstrate
16 to the satisfaction of the department that no activity of the
17 type regulated under this act was conducted during the period the
18 license was expired.

19 Sec. 10. The department may promulgate rules pursuant to
20 the administrative procedures act of 1969, Act No. 306 of the
21 Public Acts of 1969, being sections 24.201 to 24.328 of the
22 Michigan Compiled Laws, to implement this act.

23 Sec. 11. (1) The department shall review the operations of
24 licensees or persons not licensed under this act whose activities
25 are the type regulated under this act and shall investigate com-
26 plaints received. The department may initiate contested case
27 proceedings based on the findings of a department investigation.

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

4 (a) Acting as an athlete agent or athlete agent firm without
5 a license issued under this act.

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

8 (3) Based on an affidavit by a person familiar with the
9 facts set forth in the affidavit, or, if appropriate, based upon
10 an affidavit of information and belief, if the department deter-
11 mines that an imminent threat to the public health, safety, and
12 welfare exists, the department may summarily suspend the license
13 of an athlete agent firm or athlete agent pursuant to section 92
14 of the administrative procedures act of 1969, Act No. 306 of the
15 Public Acts of 1969, being section 24.292 of the Michigan
16 Compiled Laws. If a summary suspension action is taken by the
17 department, contested case proceedings shall be promptly com-
18 menced and determined by the department in accordance with sec-
19 tion 92 of Act No. 306 of the Public Acts of 1969.

20 (4) After the issuance of a formal complaint by the depart-
21 ment, a matter shall be processed in accordance with Act No. 306
22 of the Public Acts of 1969. Based upon findings of fact and con-
23 clusions of law provided by an administrative law examiner, the
24 department shall determine whether or not a violation of this act
25 or the rules promulgated under this act has occurred and shall
26 determine the final disciplinary action to be taken.

1 Sec. 12. The department may assess 1 or more of the
2 following penalties against a person who violates this act or a
3 rule promulgated under this act:

4 (a) Revocation of a license.

5 (b) Suspension of a license.

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

8 (d) Denial, for a specified time, of a license or of the
9 renewal of a license.

10 (e) Restitution.

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

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

18 (h) Issuance of a cease and desist order.

19 (i) Imposition of a requirement that the bond required by
20 this act be increased and maintained for a specific period of
21 time.

22 Sec. 13. In addition to the grounds set forth in section
23 12, a person who commits either of the following shall be subject
24 to the penalties imposed in section 12:

25 (a) Falsifies an application for licensure, renewal of
26 licensure, or any document required by this act, including a
27 disclosure statement.

1 (b) Committing fraud, deceit, deception, or making a false
2 statement or misrepresentation designed to deceive or persuade a
3 person to sign or induce another to sign an agent contract or
4 professional sport services written contract or to agree to any
5 terms within or outside the written contract.

6 Sec. 14. (1) In addition to the penalties prescribed in
7 section 12, a person who does either of the following is guilty
8 of a misdemeanor, punishable by imprisonment for not more than 1
9 year or by a fine of not more than \$10,000.00, or both:

10 (a) Acts as or offers to act as an athlete agent or athlete
11 agent firm without a license issued under this act.

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

14 (2) The department or the department of the attorney general
15 may petition a circuit court to issue a subpoena which shall
16 require the person subpoenaed to appear or produce relevant docu-
17 mentary material for examination during the conduct of an inves-
18 tigation or at a proceeding conducted by the department under the
19 administrative procedures act of 1969, Act No. 306 of the Public
20 Acts of 1969, being sections 24.201 to 24.328 of the Michigan
21 Compiled Laws.

22 (3) The department or the department of the attorney general
23 may petition a circuit court for injunctive relief or other reme-
24 dies at law to enforce orders of the department, this act, and
25 rules promulgated under this act.

26 Sec. 15. A person who engages in business as an athlete
27 agent shall not bring or maintain an action in a court in this

1 state for the collection of money or compensation for the
2 performance of an act which is related to the business of an ath-
3 lete agent or for the enforcement of an agent contract or profes-
4 sional sport services contract without alleging and proving that
5 the person was licensed under this act during the entire per-
6 formance of the act or contract.

7 Sec. 16. This amendatory act shall not take effect unless
8 Senate Bill No. _____ or House Bill No. 5074 (request
9 no. 01872'89 a) of the 85th Legislature is enacted into law.