



**House  
Legislative  
Analysis  
Section**

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### THE APPARENT PROBLEM:

The behavior of unscrupulous agents who prey upon talented but naive student athletes, as well as the actions of unethical sports boosters, have given rise to calls for legislative action. While there exist private rules and administrative sanctions (for example, those of the National Collegiate Athletic Association or NCAA), they are inadequate, in large part because they govern the conduct of students and schools but not of agents and boosters. When it is revealed that a student has signed a contract with an agent while still engaging in college athletics, the student suffers for forfeiting further eligibility but the agent goes unpunished. When over-involved alumni give money, cars, or other special favors to athletes in violation of NCAA standards, the athletes and their schools are penalized directly but not the alumni. Critics cite a recent well-publicized case of an agent signing numerous athletes before their eligibility expired by offering large advance payments. Also cited are cases of agents taking a "shotgun approach" by signing up large numbers of student-athletes, sometimes enticing them with loans, hoping that a few will gain lucrative contracts from professional sports teams. There are several dangers in these practices. Obviously, students can be hurt. They can lose their eligibility to play college sports, they can lose the scholarship support needed to complete their educational programs, they can injure their reputations, and they can find themselves in debt to agents without any hope of making it in professional sports (very few college athletes ever play professionally). Schools, too, can suffer from these activities, by losing valuable players and gaining unsavory reputations that will adversely affect public support. College athletic programs and coaches in particular face the prospect of losing their influence over student-athletes when athletes are indebted to or otherwise in the control of unethical agents. Among other things, this could lead to problems with gambling and point-shaving. Of course, there are principled agents and morally correct alumni recruiters and boosters. What is needed is legislation to regulate unethical practices.

### THE CONTENT OF THE BILLS:

The bills would, in general, prohibit agents from entering into certain arrangements with student athletes before the expiration of college eligibility and from paying college employees for referrals of clients; prohibit people, with a few exceptions, from engaging in certain activities aimed at recruiting athletes to attend a particular school or rewarding them for doing so; and require the licensing of "athlete agents".

House Bill 4634 would amend the Penal Code to make it a misdemeanor for an athlete agent to:

- induce a student athlete to enter into an agent contract or professional sports services contract before the student athlete's eligibility for collegiate athletics expires.

House Bill 4571 as passed by the House  
House Bill 4634 as passed by the House  
Sponsor: Rep. Joseph Palamara

House Bill 4635 as passed by the House  
House Bill 4636 as passed by the House  
Sponsor: Rep. Perry Bullard

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(Generally, the contracts in question would be those that anticipate the student becoming a professional athlete.)

- enter into an agreement whereby the athlete agent gives, offers, or promises anything of value to an employee of an institution of higher education in return for the referral of a student athlete by that employee.

The bill would not apply to a member of a student athlete's immediate family (i.e., spouse, child, parent, stepparent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, first cousin, or the spouse or guardian of the aforementioned).

The bill defines a student athlete as "an individual who engages in, is eligible to engage in, or may be eligible to engage in any intercollegiate sporting event, contest, exhibition, or program."

A violation would be punishable by a fine of not more than \$50,000 or an amount equal to three times the inducement involved, whichever was greater, or imprisonment for not more than one year, or both.

House Bill 4634 is tie-barred to House Bills 4635 and 4636.

MCL 750.411e

House Bill 4571 would create a new act to prohibit people from giving, offering, promising, or attempting to give any money or thing of value to a student athlete or an immediate family member of a student athlete in order:

- to induce, encourage, or reward the student athlete's application, enrollment, or attendance at an institution of higher education in order to have the student athlete participate in intercollegiate sporting events, contests, exhibitions, or programs at that institution; or
- to induce, encourage, or reward the student athlete's participation in an intercollegiate sporting event, contest, exhibition, or program.

The bill would also prohibit people from aiding or abetting the abovementioned acts.

The prohibitions would not apply to an immediate family member of a student athlete; to an institution of higher education or its representatives when acting in accordance with an official written policy of the institution that complied with rules promulgated by the Department of Education; or to an intercollegiate athletic award approved or administered by the school the athlete attended.

A person who engaged in the prohibited conduct knowing or having reason to know it was a violation of the law would be guilty of a misdemeanor, punishable by a fine of not more than \$50,000 or three times the amounts involved, whichever was greater, or not more than one year imprisonment, or both.

H.B. 4571 et al (7-29-87)

The bill would also prohibit a student athlete or immediate family member from soliciting the prohibited payments. To do so would be a misdemeanor punishable by a fine of not more than \$1,000 or an amount equal to the amount accepted, whichever was greater.

The bill would require the Department of Education to promulgate rules to establish standards for the giving and receiving of money and things of value, pursuant to the Administrative Procedures Act.

House Bill 4635 would create the Athlete Agent's Licensing Act, and would prohibit anyone from acting or offering to act as an athlete agent or as an athlete agent firm without a license from the Department of Licensing and Regulation. The bill would also incorporate the prohibitions found in House Bill 4634 against providing inducements to college athletes and kickbacks to college employees. The bill would not apply to a member of a student athlete's immediate family. House Bill 4636 would amend the State License Fee Act to prescribe fees for agent licensure. (MCL 338.2276)

The department would issue two kinds of licenses, one for agents and one for firms of agents. A one-person firm could be issued a joint license. Licenses would be issued for three-year periods (although initial licenses could be for shorter periods to stagger renewals). An agent would need a duplicate license for each firm he or she represented, and an agent or firm would need a duplicate license for each location of operation. Agents would have to carry and produce upon demand a pocket card provided by the department.

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 and addresses of the firms represented, a record of all felony convictions or misdemeanor convictions punishable by imprisonment of the agent and each owner, partner, officer, and shareholder (with 10 percent or more of the stock) of the firm represented by the agent, and a record of any sanctions issued to or disciplinary actions taken against the agent, firm, or any athlete, professional sports team, or institution of higher education as a result of the the agent's or firm's conduct. The disclosure statement would have to be updated as necessary. Prospective clients would have to be given a copy of the current disclosure statement.

An agent firm would have to submit, among other things, the names and addresses of each owner, partner, officer, and shareholder with 10 percent or more of any stock and a list of individuals authorized to represent the firm as agents. The applicant would have to establish that all those people met minimum qualifying standards. An agent firm, once licensed, would have to file with the department a copy of each agent contract or professional sport services contract executed by an agent within 30 days after it was signed by a client. The firm would have to maintain a record of all contracts and related financial transactions and would have to permit the department to inspect the books and records during customary business hours upon request.

Licenses from outside the state would have to file with the department an irrevocable consent to service of process. The consent would indicate that a process or pleading served on the department would be sufficient service on the licensee if the plaintiff forwards a copy of the process or pleading by certified mail to the licensee's business address. A foreign corporation would also have to file a copy of its authorization to do business in the state.

The Department of Licensing and Regulation would have to review the operations of licensees and of people who may be required to be licensed, and investigate all complaints. It could initiate contested case proceedings based on findings of an investigation. The department, faced with violations, would be authorized to 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, increase an agent's bond, and issue cease and desist orders. Such penalties could also be invoked in cases of falsifying license application information and of committing fraud and similar offenses to get someone to sign a contract or agree to provisions within a contract.

The attorney general could petition a circuit court to issue a subpoena for materials during an investigation by the Department of Licensing and Regulation, and could petition for injunctive relief or other remedies to enforce departmental orders.

Further, under the bill it would be a misdemeanor punishable by imprisonment for not more than one year or by a fine of not more than \$10,000, or both, to act as or offer to act as an athlete agent or athlete agent firm without a license and to interfere with, impede, or obstruct a departmental investigation.

The department would promulgate rules to implement the act. House Bill 4635 is tie-barred to House Bill 4636, which would establish the following fees: application processing fee, \$25; license fee, per year, \$25; duplicate license fee, \$10 each; and late renewal penalty, \$25.

## **FISCAL IMPLICATIONS:**

The Department of Education estimates that the promulgation of rules will cost about \$15,000 per year (for one or two years) and that subsequent administrative costs will cost at least \$18,000 annually. (6-2-87) The Department of Licensing and Regulation has said it does not anticipate significant expenditures for the licensing program. (6-8-87)

## **ARGUMENTS:**

### **For:**

The bills would work toward reducing abuses by sports agents and booster groups that are damaging college athletics. The current sanctions available, through athletic conferences and interscholastic sports organizations (such as the NCAA), penalize student-athletes and their institutions but do not effectively reach the unscrupulous agents and unethical boosters. The bills would deter agents from dealing with college athletes while they had eligibility remaining (which is against NCAA rules) by making such activities illegal and providing penalties. Since they face no such sanctions now, agents can tempt naive student athletes with impunity. The students if caught lose their right to play college sports, lose their scholarships, lose respect, and will likely find themselves unable to play professional sports as well (since so few college athletes do succeed at making a professional team). In some cases, students suffer all of these consequences and face the additional hardship of owing money to the agents who brought on their suffering. Boosters, too, can injure student-athletes by inducing them to attend a particular school or by rewarding them for playing sports with gifts that violate the rules of college sports. The bills would make these activities illegal as well and serve to deter overeager alumni. The athlete agent licensure requirements would allow the state to keep tabs on sports agents and take action against violators. Applicants would have to submit bonds and disclosure statements that revealed any prior

misconduct. Agents would have to file their sports contracts with the Department of Licensing and Regulation, and the department would have broad powers to inspect the records of agents and the companies that employed them. The licensing requirement will impose little hardship on responsible sports agents but will provide a means for the state to discourage and penalize unethical agents.

***Against:***

It is not clear that the legislature should involve itself in this issue. The private rules and remedies that exist may not be perfect or always effective but is that reason for the state to regulate the economic behavior of adults in this way? It is one thing to say that people who enter certain kinds of contracts have broken the rules of athletic conferences and interscholastic sports organizations, but yet another to make such behavior a crime. Is it wise for the legislature to give NCAA rules the force of law? Does the state want to grant implicit approval to the existing aims and incentives of college athletics? Besides, there have been few of the scandals in Michigan that have rocked college sports elsewhere, and perhaps more effective educational programs for student-athletes, alumni, and agents, coupled with better enforcement of the existing private rules, would be enough. Furthermore, each of the major college sports has a different kind of relationship with the professional leagues, and it may not be appropriate to act as if the problems are the same from sport to sport (e.g. eligibility might be a more important concept in college football than in basketball and hockey, whose professional leagues allow players to leave college early to play those sports, or than in individual — rather than team — sports).

***POSITIONS:***

The Department of Licensing and Regulation supports the substitute for House Bill 4635. (6-8-87)

The State Board of Education supports the bills. (7-14-87)