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BILL ANALYSIS

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Senate Fiscal Agency

Lansing, Michigan 48909

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DEC 09 1988

House Bill 4571 (Substitute H-1 as reported without amendments)

House Bill 4634 (Substitute H-2 as reported without amendments)

House Bill 4635 (Substitute H-1 as reported with amendments)

House Bill 4636 (Substitute H-1 as reported with amendments)

Sponsor: Representative Perry Bullard (H.B. 4571, 4635 & 4636)

Representative Joseph Palamara (H.B. 4634)

House Committee: Judiciary

Senate Committee: Regulatory Affairs

Date Completed: 11-3-88

### **RATIONALE**

Reportedly, the behavior of unscrupulous agents who recruit student athletes as well as the action of unethical sports boosters have given rise to call for regulation of these activities. While there already are private rules and administrative sanctions, such as those of the National Collegiate Athletic Association (NCAA), some people contend that these rules are inadequate because they govern the conduct of students and schools, but not the conduct of athletic agents and boosters. Thus, when it is revealed that a student athlete has signed a contract with an agent while the student is still engaged in college athletics, the student forfeits further eligibility under NCAA rules, but the agent goes unpunished. When alumni give student athletes money, cars, or special favors in violation of NCAA standards, the athletes and their schools are penalized but not the alumni. Critics of current regulations cite a recent incident in which a Federal grand jury indicted three agents upon finding that improper payments and threats of violence were used to induce dozens of student athletes — some of whom attended Michigan State University and the University of Michigan — to sign professional management contracts while they were in college. While higher education institutions and athletic associations, such as the NCAA, are working to reduce the use of financial incentives in college athletics, some people believe that it also would be beneficial if efforts were made at the State level to protect student athletes and maintain integrity in Michigan's collegiate athletic programs.

### **CONTENT**

House Bill 4571 (Substitute H-1) would create a new act to prohibit payment to student athletes to encourage their participation in intercollegiate sports or to encourage them to attend a college or university to participate in sports; to prohibit student athletes from accepting payment for these purposes; to prescribe penalties for violations; and, to require the Department of Education to promulgate rules that would allow giving money to student athletes.

House Bills 4634 (Substitute H-2), 4635 (Substitute H-1), and 4636 (Substitute H-1), in general would 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, and require the licensing of and prescribe fees for licensing "athlete agents".

#### House Bill 4571 (Substitute H-1)

Generally, a person could not give, offer, promise, or attempt to give any money or other thing of value to a student athlete or his or her immediate family member for either of the purposes described below. A student athlete or member of his or her immediate family could not solicit or accept money or anything of value for either of the following purposes:

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

The prohibition against offering money to a student athlete would not apply to the following, and a student athlete or family member could accept money or other thing of value from the following:

- An institution of higher education or any of its officers or employees, if the institution, officer, or employee were acting according to an official written policy of the institution that complied with rules of the Department of Education.
- An intercollegiate athletic award approved or administered by the institution of higher education that the student athlete attended.
- An immediate family member of the athlete.

A person who engaged in conduct knowing or having reason to know that it violated the prohibition against offering money to a student athlete would be guilty of a misdemeanor, punishable by a maximum fine of \$50,000, or three times the amount given, offered, or promised, whichever was greater, or up to one year's imprisonment, or both. A student athlete or family member who accepted money or other valuable thing in violation of the bill would be guilty of a misdemeanor punishable by a fine of up to \$1,000 or an amount equal to the amount accepted, whichever was greater. The prosecuting attorney of a

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H.B. 4571 (H-1), et al (11-3-88)

county in which a violation occurred would have to enforce the bill.

The Department of Education would be required to promulgate rules to establish standards for giving and receiving money and things of value as described above.

"Institution of higher education" would mean a public or private college or university in this State. "Immediate family" would mean the student athlete's spouse, child, parent, stepparent, grandparent, grandchild, sibling, in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse or guardian of any of those persons.

#### House Bill 4634 (Substitute H-2)

The bill would amend the Michigan Penal Code to make it a misdemeanor for an athlete agent to do either of the following:

- Induce a student athlete to enter into an agent contract or professional sport services contract before the student athlete's eligibility for collegiate athletics expired. An "agent contract" would be any contract or agreement in which a person authorizes an athlete agent to negotiate or solicit employment for the person with a professional sport team or as a professional athlete. A "professional sport services contract" would be a contract or agreement by which a person is employed or agrees to render services as a player on a professional sport team or as a professional athlete.
- Enter into an agreement in which the athlete agent gave, offered, or promised 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 term "athlete agent" would apply to a person who directly or indirectly recruits or solicits a person to enter into an agent contract or professional sport services contract or who procures or offers employment for a person with a professional sport team or as a professional athlete. The term would not apply to a member of a person's immediate family, i.e., spouse, child, parent, stepparent, grandparent, grandchild, sibling, in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse or guardian of any of those persons.

The bill would define "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 up to \$50,000 or an amount equal to three times the inducement involved or three times the value of the agreement entered into, whichever was greater, or imprisonment for up to one year, or both.

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

Proposed MCL 750.411e

#### House Bill 4635 (Substitute H-1)

The bill 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 specifies that it would not apply to a professional boxing manager licensed under the Occupational Code. The bill also would incorporate the prohibitions found in House Bill 4634 (H-2) against providing inducements to college athletes and "anything of value" to college and university employees for referrals of student athletes.

The Department would be authorized to issue two kinds of licenses, one for agents and one for firms of agents. Licenses would be issued for three-year periods. A person whose license had lapsed would be prohibited from engaging in any action that required licensure. An agent would need a license for each firm he or she represented, and an agent or firm would need a 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 name and address of the firms represented and the license number of the agent and the firms; a record of all felony convictions or misdemeanor convictions punishable by imprisonment of the agent and each owner, partner, officer, and shareholder (with 10% 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 sport team, or institution of higher education as a result of 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 the name and address of each owner, partner, officer, and shareholder with 10% or more of any stock; the name and address of the firm; the name under which it would do business in Michigan and the location of its business offices in Michigan; and a list of licensed athletic agents authorized to represent the firm as agents. The applicant would have to establish that all those people met minimum qualifying standards. The agents and agent firms would have to notify the Department and pay the fee for changing information on a license concerning any change of address, or owners or shareholders of the firm, and the addition or deletion of athlete agents. An agent firm license would not be transferable. A licensed agent firm, however, could add or remove owners or shareholders. An agent firm or athletic agent 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 agent firm or agent 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.

Licensees 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 forwarded a copy of the process or pleading by certified mail to the licensee's business address. A foreign corporation also would 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 could 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 "limitations" as defined in the bill, deny license and license renewals, issue written reprimands and letters of censure, impose

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civil fines of up to \$10,000 per offense, order restitution, 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 Department of Licensing and Regulation or the Attorney General could petition a circuit court to issue a subpoena for materials during an investigation by the Department, 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 up to one year or by a fine of up to \$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 be required to promulgate rules to implement the act. House Bill 4635 is tie-barred to House Bill 4636, and would take effect July 1, 1989.

#### House Bill 4636 (Substitute H-1)

The bill would amend the State License Fee Act to prescribe the following license fees for athlete agents and athlete agent firms: application processing fee, \$100; annual license fee, \$100; additional firm or location license fee, \$50 each; and late renewal fee, \$25.

The bill is tie-barred to House Bill 4635, and would take effect July 1, 1989.

Proposed MCL 338.2276

### **SENATE COMMITTEE ACTION**

The Senate Committee on Regulatory Affairs adopted amendments to the proposed "Athlete Agent's Licensing Act", House Bill 4635 (H-1), to specify that it would not apply to a professional boxing manager licensed under the Occupational Code; prohibit the transfer of an athlete agent firm license; and, permit the Department of Licensing and Regulation to issue a license with "limitations", as defined in the bill, for violation of the proposed Act or rules. Committee amendments also would increase fees proposed in House Bill 4636 (H-1) for application processing, annual licenses, and additional firm or location licenses. In addition, the Committee adopted amendments to both bills to give them effective dates of July 1, 1989.

### **FISCAL IMPACT**

#### House Bill 4571 (H-1)

The Department of Education would incur minimal costs (\$5,000-\$15,000) in promulgating rules as required by the bill. Counties would incur indeterminate costs in enforcing and prosecuting violations. As these local costs would result from State requirements, the costs would be the responsibilities of the State. The number of potential violators is not known. There would be indeterminate revenues from successful prosecutions; the revenues would go to libraries pursuant to Section 9, Article IX of the State Constitution of 1963.

#### House Bills 4634 (H-2), 4635 (H-1), and 4636 (H-1)

House Bills 4634-4636 would have a fiscal impact of approximately \$3,000 in annual additional expense to the State, a one-time increase in revenue to the State of

\$25,000 in the first year, and no fiscal impact on local government.

The Department of Licensing and Regulation would be required to license the approximately 200 athlete agents and 100 athlete agent firms doing business in the State. The Department would also be required to enforce the proposed legislation and investigate complaints. The annual on-going cost to the Department would be approximately \$33,000. These costs would be mostly offset by the approximately \$30,000 annual license fee revenue that would be collected. The estimated annual cost to the State would be \$3,000 (\$33,000-\$30,000).

The Department would also incur one-time start-up costs of approximately \$5,000 to develop the licensing and enforcement program. These costs would be more than offset in the first year by the one-time application processing fee (\$100 x 200 athlete agents + \$100 x 100 athlete agent firms = \$30,000) for a net increase in revenue to the State in the first year of \$25,000.

### **ARGUMENTS**

#### **Supporting Argument**

Colleges in many states, including Michigan, have experienced censure and adverse notoriety as a result of abuses by sports agents and college booster groups in the recruitment of student athletes. While the NCAA and other athletic conference rules are known to colleges, some individuals — whether boosters, athletes, or members of an athlete's family — may not have been aware of the application of the rules. Regardless, the current sanctions 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 the athletes were still eligible to play college sports, by making such activities illegal and subjecting them to penalties. Regulation of athletic agents would make their activity in Michigan more visible and subject to needed control and would help institutions of higher education identify professional agents. Furthermore, regulation of college boosters would help to deter over-eager alumni from trying to induce student athletes to attend a particular school or rewarding student athletes for playing at the alumni's alma mater. Regulation of activities of athletic agents and boosters would strengthen the impact of NCAA and other intercollegiate conference rules and would make a violation a more serious matter for athletic agents and boosters, as well as reassure Michigan taxpayers, alumni, and institutional donors that the State and its institutions of higher education were acting responsibly.

#### **Opposing Argument**

Existing NCAA and other intercollegiate conference guidelines are sufficient in content and penalty. If institutions are following NCAA rules and are policing themselves, there is no need for action by the State. Legislative Analyst: L. Arasim  
Fiscal Analyst: A. Rich (H.B. 4571)

J. Schultz (H.B. 4634, H.B. 4635, H.B. 4636)

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.