

HOUSE BILL No. 5475

April 23, 2014, Introduced by Reps. VerHeulen and Singh and referred to the Committee on Regulatory Reform.

A bill to regulate certain contracts and transactions involving athlete agents and student-athletes in this state; to provide for registration and regulation of athlete agents; to provide for powers and duties of certain state agencies; to require disclosures; 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. 2. 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
6 the student-athlete a professional sports services contract or an

1 endorsement contract.

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

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

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

19 (e) "Department" means the department of licensing and
20 regulatory affairs.

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

26 (g) "Intercollegiate sport" means a sport played at the
27 collegiate level for which eligibility requirements for

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

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

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) "Registration" means registration as an athlete agent
17 under this act.

18 (l) "State" means this state or any other state of the United
19 States, the District of Columbia, Puerto Rico, the United States
20 Virgin Islands, or any territory or insular possession subject to
21 the jurisdiction of the United States.

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

27 Sec. 3. (1) By acting as an athlete agent in this state, a

1 nonresident individual appoints the department as the individual's
2 agent for service of process in any civil action in this state
3 related to the individual's acting as an athlete agent in this
4 state.

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

7 Sec. 4. (1) Except as otherwise provided in subsection (2), an
8 individual may not act as an athlete agent in this state if he or
9 she does not hold a certificate of registration under section 6 or
10 8.

11 (2) Before being issued a certificate of registration, an
12 individual may act as an athlete agent in this state for all
13 purposes except signing an agency contract, if both of the
14 following are met:

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

17 (b) Within 7 days after an initial act as an athlete agent,
18 the individual submits an application for registration as an
19 athlete agent in this state.

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

23 Sec. 5. (1) An applicant for registration shall submit an
24 application for registration to the department in a form prescribed
25 by the department. An application filed under this section is a
26 public record and available to the public under the freedom of
27 information act, 1976 PA 442, MCL 15.231 to 15.246. The application

1 must be in the name of an individual and, except as otherwise
2 provided in subsection (2), signed or otherwise authenticated by
3 the applicant under penalty of perjury and state or contain all of
4 the following:

5 (a) The name of the applicant and the address of the
6 applicant's principal place of business.

7 (b) The name of the applicant's business or employer, if
8 applicable.

9 (c) Any business or occupation engaged in by the applicant for
10 the 5-year period preceding the date of submission of the
11 application.

12 (d) A description of all of the following about the applicant:

13 (i) His or her formal training as an athlete agent.

14 (ii) His or her practical experience as an athlete agent.

15 (iii) His or her educational background relating to the
16 applicant's activities as an athlete agent.

17 (e) The names and addresses of 3 individuals not related to
18 the applicant who are willing to serve as references.

19 (f) The name, sport, and last known team for each individual
20 for whom the applicant acted as an athlete agent during the 5 years
21 immediately preceding the date of submission of the application.

22 (g) The names and addresses of all of the following:

23 (i) If the athlete agent's business is not a corporation, the
24 partners, members, officers, managers, associates, or profit-
25 sharers of the business.

26 (ii) If a corporation employs the athlete agent, the officers,
27 directors, and any shareholder of the corporation that has an

1 interest of 5% or more.

2 (h) Whether the applicant or any person named under
3 subdivision (g) has been convicted of a crime that, if committed in
4 this state, would be a crime involving moral turpitude or a felony,
5 and if so, identification of the crime.

6 (i) Whether there has been any administrative or judicial
7 determination that the applicant or any person named under
8 subdivision (g) has made a false, misleading, deceptive, or
9 fraudulent representation.

10 (j) Any instance in which the conduct of the applicant or any
11 person named under subdivision (g) resulted in the imposition of a
12 sanction, suspension, or declaration of ineligibility to
13 participate in an interscholastic or intercollegiate athletic event
14 on a student-athlete or educational institution.

15 (k) Any sanction, suspension, or disciplinary action taken
16 against the applicant or any person named under subdivision (g)
17 arising out of occupational or professional conduct.

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

22 (2) An individual who has submitted an application for, and
23 holds a certificate of, registration or licensure as an athlete
24 agent in another state, may submit a copy of the application and
25 certificate in lieu of submitting an application in the form
26 prescribed under subsection (2). The department shall accept the
27 application and the certificate from the other state as an

1 application for registration in this state if the application to
2 the other state meets all of the following:

3 (a) Was submitted in the other state within the 6-month period
4 preceding the submission of the application in this state and the
5 applicant certifies that the information contained in the
6 application is current.

7 (b) Contains information substantially similar to or more
8 comprehensive than that required in an application submitted in
9 this state.

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

11 Sec. 6. (1) Except as otherwise provided in subsection (2),
12 the department shall issue a certificate of registration to an
13 individual who complies with section 5(1) or whose application has
14 been accepted under section 5(2).

15 (2) The department may refuse to issue a certificate of
16 registration if the department determines that the applicant has
17 engaged in conduct that has a significant adverse effect on the
18 applicant's fitness to act as an athlete agent. In making the
19 determination, the department may consider whether the applicant
20 has done any of the following:

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

23 (b) Made a materially false, misleading, deceptive, or
24 fraudulent representation in the application or as an athlete
25 agent.

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

1 (d) Engaged in conduct prohibited under section 14.

2 (e) Had a registration or license as an athlete agent
3 suspended, revoked, or denied or been refused renewal of a
4 registration or license as an athlete agent in any state.

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

9 (g) Engaged in conduct that significantly adversely reflects
10 on the applicant's credibility, honesty, or integrity.

11 (3) In making a determination under subsection (2), the
12 department shall consider all of the following:

13 (a) How recently the conduct occurred.

14 (b) The nature of the conduct and the context in which it
15 occurred.

16 (c) Any other relevant conduct of the applicant.

17 (4) An athlete agent may apply to renew a registration by
18 submitting an application for renewal in a form prescribed by the
19 department. An application filed under this section is a public
20 record and available to the public under the freedom of information
21 act, 1976 PA 442, MCL 15.231 to 15.246. The application for renewal
22 must be signed by the applicant under penalty of perjury and must
23 contain current information on all matters required in an original
24 registration.

25 (5) An individual who has submitted an application for renewal
26 of registration or licensure in another state, in lieu of
27 submitting an application for renewal in the form prescribed under

1 subsection (4), may file a copy of the application for renewal and
2 a valid certificate of registration or licensure from the other
3 state. The department shall accept the application for renewal from
4 the other state as an application for renewal in this state if the
5 department determines the application to the other state meets all
6 of the following:

7 (a) Was submitted in the other state within six months next
8 preceding the filing in this state and the applicant certifies the
9 information contained in the application for renewal is current.

10 (b) Contains information substantially similar to or more
11 comprehensive than that required in an application for renewal
12 submitted in this state.

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

14 (6) A certificate of registration or a renewal of a
15 registration is valid for 2 years.

16 Sec. 7. (1) The department may suspend, revoke, or refuse to
17 renew a registration for conduct that would have justified denial
18 of registration under section 6(2).

19 (2) The department may deny, suspend, revoke, or refuse to
20 renew a certificate of registration or licensure only after proper
21 notice and an opportunity for a hearing conducted under the
22 provisions of the administrative procedures act of 1969, 1969 PA
23 306, MCL 24.201 to 24.328.

24 Sec. 8. The department may issue a temporary certificate of
25 registration while an application for registration or renewal of
26 registration is pending.

27 Sec. 9. An application for registration or renewal of

1 registration must be accompanied by a fee in 1 of the following
2 amounts:

3 (a) For an initial application for registration, \$400.00.

4 (b) For an application for registration based on a certificate
5 of registration or licensure issued by another state, \$250.00.

6 (c) For an application for renewal of registration, \$250.00.

7 (d) For an application for renewal of registration based on an
8 application for renewal of registration or licensure submitted in
9 another state, \$200.00.

10 Sec. 10. (1) An agency contract must be in a record, signed or
11 otherwise authenticated by the parties.

12 (2) An agency contract must state or contain all of the
13 following:

14 (a) The amount and method of calculating the consideration to
15 be paid by the student-athlete for services to be provided by the
16 athlete agent under the contract and any other consideration the
17 athlete agent has received or will receive from any other source
18 for entering into the contract or for providing the services.

19 (b) The name of any person not listed in the application for
20 registration or renewal of registration who will be compensated
21 because the student-athlete signed the agency contract.

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

24 (d) A description of the services to be provided to the
25 student-athlete.

26 (e) The duration of the contract.

27 (f) The date of execution of the contract.

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

4 "WARNING TO STUDENT-ATHLETE

5 IF YOU SIGN THIS CONTRACT:

6 (1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT-ATHLETE
7 IN YOUR SPORT;

8 (2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER
9 ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST
10 NOTIFY YOUR ATHLETIC DIRECTOR; AND

11 (3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT.
12 CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.".

13 (4) An agency contract that does not conform to this section
14 is voidable by the student-athlete. If a student-athlete voids an
15 agency contract, the student-athlete is not required to pay any
16 consideration under the contract or to return any consideration
17 received from the athlete agent to induce the student-athlete to
18 enter into the contract.

19 (5) The athlete agent shall give a record of the signed or
20 otherwise authenticated agency contract to the student-athlete at
21 the time of execution.

22 Sec. 11. (1) Within 72 hours after entering into an agency
23 contract or before the next scheduled athletic event in which the
24 student-athlete may participate, whichever occurs first, the
25 athlete agent shall give notice in a record of the existence of the
26 contract to the athletic director of the educational institution at
27 which the student-athlete is enrolled or the athlete agent has

1 reasonable grounds to believe the student-athlete intends to
2 enroll.

3 (2) Within 72 hours after entering into an agency contract or
4 before the next athletic event in which the student-athlete may
5 participate, whichever occurs first, the student-athlete shall
6 inform the athletic director of the educational institution at
7 which the student-athlete is enrolled that he or she has entered
8 into an agency contract.

9 Sec. 12. (1) A student-athlete may cancel an agency contract
10 by giving notice of the cancellation to the athlete agent in a
11 record within 14 days after the contract is signed.

12 (2) A student-athlete may not waive the right to cancel an
13 agency contract.

14 (3) If a student-athlete cancels an agency contract, the
15 student-athlete is not required to pay any consideration under the
16 contract or to return any consideration received from the athlete
17 agent to induce the student-athlete to enter into the contract.

18 Sec. 13. (1) An athlete agent shall retain all of the
19 following records for a period of at least 5 years:

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

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

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

26 (2) An athlete agent shall make any records the agent is
27 required to retain under subsection (1) available for inspection by

1 the department during normal business hours.

2 Sec. 14. (1) An athlete agent, with the intent to induce a
3 student-athlete to enter into an agency contract, shall not do any
4 of the following:

5 (a) Give any materially false or misleading information or
6 make a materially false promise or representation.

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

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

11 (2) An athlete agent shall not intentionally do any of the
12 following:

13 (a) Initiate contact with a student-athlete unless registered
14 under this act.

15 (b) Refuse or fail to retain or permit inspection of the
16 records the athlete agent is required to retain under section 13.

17 (c) Fail to register if required to register under section 4.

18 (d) Provide materially false or misleading information in an
19 application for registration or renewal of registration.

20 (e) Predate or postdate an agency contract.

21 (f) Fail to notify a student-athlete before the student-
22 athlete signs or otherwise authenticates an agency contract for a
23 particular sport that the signing or authentication may make the
24 student-athlete ineligible to participate as a student-athlete in
25 that sport.

26 Sec. 15. An athlete agent who violates section 14 is guilty of
27 a misdemeanor punishable by a fine of not more than \$1,000.00.

1 Sec. 16. (1) An educational institution has a right of action
2 against an athlete agent or a former student-athlete for damages
3 caused by a violation of this act. In an action under this section,
4 the court may award to the prevailing party costs and reasonable
5 attorney's fees.

6 (2) Damages of an educational institution under subsection (1)
7 include losses and expenses incurred because, as a result of the
8 conduct of an athlete agent or former student-athlete, the
9 educational institution was injured by a violation of this act or
10 was penalized, disqualified, or suspended from participation in
11 athletics by a national association for the promotion and
12 regulation of athletics, by an athletic conference, or by
13 reasonable self-imposed disciplinary action taken to mitigate
14 sanctions likely to be imposed by such an organization.

15 (3) A right of action under this section does not accrue until
16 the educational institution discovers or by the exercise of
17 reasonable diligence would have discovered the violation by the
18 athlete agent or former student-athlete.

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

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

23 Sec. 17. The department may assess an administrative fine
24 against an athlete agent, in the amount of not more than \$1,000.00,
25 for a violation of this act.

26 Sec. 18. In applying and construing this uniform act,
27 consideration must be given to the need to promote uniformity of

1 the law with respect to its subject matter among states that enact
2 it.

3 Sec. 19. The provisions of this act governing the legal
4 effect, validity, or enforceability of electronic records or
5 signatures, and of contracts formed or performed with the use of
6 those records or signatures, conform to the requirements of section
7 102 of the electronic signatures in global and national commerce
8 act, 15 USC 7002, and supersede, modify, and limit the requirements
9 of the electronic signatures in global and national commerce act,
10 15 USC 7001 to 7031.

11 Enacting section 1. This act takes effect 90 days after the
12 date this act is enacted into law.

13 Enacting section 2. Section 411e of the Michigan penal code,
14 1931 PA 328, MCL 750.411e, is repealed.