

By: Brimer

S.B. No. 292

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of athlete agents.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subdivision (2), Section 2051.001, Occupations Code, is amended to read as follows:

(2) "Athlete" means an individual who:

(A) is eligible to participate in intercollegiate sports contests as a member of a sports [~~football or basketball~~] team or as an individual competitor in a sport at an institution of higher education; or

(B) has participated as a member of an intercollegiate sports [~~football or basketball~~] team or as an individual competitor in an intercollegiate sport at an institution of higher education and has never signed an employment contract with a professional sports team.

SECTION 2. Section 2051.002, Occupations Code, is amended to read as follows:

Sec. 2051.002. PARTICIPATION IN INTERCOLLEGIATE SPORTS CONTESTS. An athlete is not eligible to participate in intercollegiate sports contests if the athlete:

(1) declares that the athlete is eligible for recruitment by a professional sports team; or

(2) has concluded, in the athlete's final year of eligibility, the athlete's final intercollegiate sports [~~football~~

1 ~~or basketball]~~ contest, as determined by the governing body of the
2 national association for the promotion and regulation of
3 intercollegiate athletics of which the athlete's institution of
4 higher education is a member.

5 SECTION 3. Subchapter A, Chapter 2051, Occupations Code, is
6 amended by adding Section 2051.006 to read as follows:

7 Sec. 2051.006. UNIFORMITY OF APPLICATION AND CONSTRUCTION.
8 In applying this chapter, consideration must be given to the need to
9 promote uniformity of the law among states that have enacted
10 similar laws.

11 SECTION 4. Section 2051.101, Occupations Code, is amended
12 to read as follows:

13 Sec. 2051.101. REGISTRATION REQUIRED. (a) Except as
14 provided by Subsection (b), a person may not act as [~~Unless~~] an
15 athlete agent in this state or represent that the person is an
16 athlete agent in this state unless the person holds a certificate of
17 registration [~~is registered~~] under this chapter [~~, the athlete agent~~
18 ~~may not:~~

19 [~~(1) contact, directly or indirectly, an athlete while~~
20 ~~the athlete is eligible to participate in intercollegiate sports~~
21 ~~contests, or~~

22 [~~(2) enter into a contract with an athlete]~~.

23 (b) Before the issuance of a certificate of registration
24 under this chapter, a person may act as an athlete agent in this
25 state for all purposes except signing an agent contract, if:

26 (1) an athlete or a person acting on behalf of the
27 athlete initiates communication with the person; and

1 (2) within seven days after the date of the initial act
2 as an athlete agent, the person submits an application for
3 registration under this chapter.

4 (c) An agent [A] contract negotiated by an unregistered
5 athlete agent is void.

6 SECTION 5. Section 2051.102, Occupations Code, is amended
7 to read as follows:

8 Sec. 2051.102. APPLICATION REQUIREMENTS. (a) Except as
9 provided by Subsection (e), an [An] applicant for registration as
10 an athlete agent must apply on a form prescribed by the secretary of
11 state.

12 (b) An applicant must provide information required by the
13 secretary of state, including:

14 (1) the applicant's:

15 (A) name;

16 (B) principal business address;

17 (C) business or occupation for the five years
18 immediately preceding the date of application; and

19 (D) formal training, practical experience, and
20 educational background relating to the applicant's professional
21 activities as an athlete agent; [~~and~~]

22 (2) the name, sport, and last known team for each
23 person the applicant represented as an athlete agent during the
24 five years immediately preceding the date of application;

25 (3) whether the applicant or a person described by
26 Subdivision (5) has been subject to any of the following:

27 (A) a conviction of a crime that in this state is

1 a felony or a crime of moral turpitude;

2 (B) an administrative or a judicial
3 determination finding the applicant or other person made a false,
4 misleading, deceptive, or fraudulent representation;

5 (C) a sanction or suspension related to
6 occupational or professional conduct;

7 (D) a denial of an application for a certificate
8 of registration or license as an athlete agent; or

9 (E) a denial, revocation, or suspension of a
10 certificate of registration or license as an athlete agent;

11 (4) whether the applicant or a person described by
12 Subdivision (5) has engaged in conduct resulting in the imposition
13 on an athlete or educational institution of a sanction, suspension,
14 or declaration of ineligibility to participate in an
15 interscholastic or intercollegiate athletic event; and

16 (5) except as provided by Subsection (d), the name and
17 address of each person, except a bona fide employee on salary, who
18 is financially interested as a partner, associate, or profit sharer
19 in the applicant's business.

20 (c) An application~~[, if requested by the secretary of~~
21 ~~state,~~] shall include the names and addresses of three [~~five~~]
22 professional references.

23 (d) If an applicant is a member of the State Bar of Texas,
24 the [an] application information required under Subsection (b)(5)
25 [(b)(2)] must include the name and address of each person who is
26 involved in the activities of the athlete agent. This subsection
27 does not require an applicant to state the name and address of a

1 member of a law firm or professional corporation who is not involved
2 in the business of the athlete agent.

3 (e) A person seeking certification as an athlete agent under
4 this chapter who holds a certificate of registration or license as
5 an athlete agent in another state may submit a copy of the previous
6 application and certificate or license instead of submitting the
7 application required by this section. The secretary of state shall
8 accept the application and the certificate or license from the
9 other state as an application for registration in this state if the
10 application to the other state:

11 (1) was submitted to the other state not earlier than
12 the 180th day before the date the application is submitted in this
13 state and the applicant certifies that the information contained in
14 the application is current;

15 (2) contains information substantially similar to or
16 more comprehensive than the information required by this section;
17 and

18 (3) was signed by the applicant under penalty of
19 perjury.

20 SECTION 6. Section 2051.105, Occupations Code, is amended
21 by amending Subsection (b) and adding Subsections (c) and (d) to
22 read as follows:

23 (b) The secretary of state may deny an application for
24 registration if the secretary of state determines the applicant has
25 engaged in conduct that has a significant adverse effect on the
26 applicant's fitness to act as an athlete agent. In making the
27 determination, the secretary of state may consider whether the

1 applicant has:

2 (1) made a materially false, misleading, deceptive, or
3 fraudulent representation in the application or as an athlete
4 agent;

5 (2) engaged in conduct that would disqualify the
6 applicant from serving in a fiduciary capacity;

7 (3) engaged in conduct prohibited by Section 2051.351;

8 (4) had a registration or licensure as an athlete
9 agent denied, suspended, or revoked;

10 (5) been denied renewal of registration or licensure
11 as an athlete agent in any state;

12 (6) engaged in conduct that resulted in the imposition
13 on an athlete or educational institution of a sanction, suspension,
14 or declaration of ineligibility to participate in an
15 interscholastic or intercollegiate athletic event; or

16 (7) engaged in conduct that adversely reflects on the
17 applicant's credibility, honesty, or integrity.

18 (c) In making a determination under Subsection (b), the
19 secretary of state shall consider:

20 (1) how recently the conduct occurred;

21 (2) the nature of the conduct and the context in which
22 it occurred; and

23 (3) any other relevant conduct of the applicant.

24 (d) Judicial review of a denial of an application for
25 registration under Subsection (a) or (b) is by trial de novo and is
26 subject to Section 2001.173, Government Code.

27 SECTION 7. Section 2051.108, Occupations Code, is amended

1 by amending Subsection (a) and adding Subsection (e) to read as
2 follows:

3 (a) Except as provided by Subsection (e), an [An] applicant
4 for renewal of registration must apply on a form prescribed by the
5 secretary of state.

6 (e) A person who has submitted an application for renewal of
7 registration or licensure as an athlete agent in another state may
8 submit a copy of the application and certificate of registration or
9 license from the other state instead of submitting the application
10 required by this section. The secretary of state shall accept the
11 application for renewal from the other state as an application for
12 renewal under this section if the application to the other state:

13 (1) was submitted to the other state not earlier than
14 the 180th day before the date the renewal application is submitted
15 in this state and the applicant certifies that the information
16 contained in the application is current;

17 (2) contains information substantially similar to or
18 more comprehensive than the information required by this section;
19 and

20 (3) was signed by the applicant under penalty of
21 perjury.

22 SECTION 8. Section 2051.203, Occupations Code, is amended
23 by amending Subsection (a) and adding Subsection (d) to read as
24 follows:

25 (a) An agent contract or a financial services contract must
26 include:

27 (1) a schedule of fees, including:

1 (A) the amount and method of computing the
2 consideration to be paid by the athlete for services to be provided
3 by the athlete agent under the contract; and

4 (B) any other consideration the athlete agent
5 received or will receive from any other source for entering into the
6 contract or for providing the services; [and]

7 (2) a description of the professional services that
8 the athlete agent will perform for the athlete;

9 (3) the name of any person not listed in the
10 application for registration or renewal of registration who will be
11 compensated because the athlete signed the agent contract;

12 (4) a description of any expenses of the athlete agent
13 the athlete agrees to reimburse;

14 (5) the duration of the contract; and

15 (6) the date the contract was signed.

16 (d) The athlete agent shall give a signed copy of the
17 contract to the athlete at the time the contract is signed.

18 SECTION 9. Subsection (a), Section 2051.204, Occupations
19 Code, is amended to read as follows:

20 (a) An agent contract or a financial services contract must
21 include the following notice:

22 (1) THIS ATHLETE AGENT IS REGISTERED WITH THE
23 SECRETARY OF STATE OF THE STATE OF TEXAS. REGISTRATION WITH THE
24 SECRETARY OF STATE DOES NOT IMPLY APPROVAL OR ENDORSEMENT BY THE
25 SECRETARY OF STATE OF THE COMPETENCE OF THE ATHLETE AGENT OR OF THE
26 SPECIFIC TERMS AND CONDITIONS OF THIS CONTRACT.

27 NOTICE TO CLIENT

1 (2) DO NOT SIGN THIS CONTRACT UNTIL YOU HAVE READ IT OR
2 IF IT CONTAINS BLANK SPACES.

3 (3) IF YOU DECIDE THAT YOU DO NOT WISH TO PURCHASE THE
4 SERVICES OF THE ATHLETE AGENT, YOU MAY CANCEL THIS CONTRACT BY
5 NOTIFYING THE ATHLETE AGENT IN WRITING OF YOUR DESIRE TO CANCEL THE
6 CONTRACT NOT LATER THAN THE 16TH DAY AFTER THE DATE ON WHICH YOU
7 SIGN THIS CONTRACT. YOU MAY NOT WAIVE THE RIGHT TO CANCEL THIS
8 CONTRACT. IF YOU CANCEL THIS CONTRACT WITHIN 16 DAYS, YOU ARE NOT
9 REQUIRED TO PAY ANY CONSIDERATION UNDER THE CONTRACT OR RETURN ANY
10 CONSIDERATION RECEIVED.

11 (4) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS AN
12 ATHLETE IN YOUR SPORT. CANCELLATION OF THIS CONTRACT MAY NOT
13 REINSTATE YOUR ELIGIBILITY.

14 (5) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS
15 AFTER ENTERING INTO THIS CONTRACT BOTH YOU AND YOUR ATHLETE AGENT
16 MUST NOTIFY YOUR ATHLETIC DIRECTOR.

17 SECTION 10. Subsection (a), Section 2051.351, Occupations
18 Code, is amended to read as follows:

19 (a) An athlete agent may not:

20 (1) publish or cause to be published:

21 (A) false, fraudulent, or misleading
22 information; or

23 (B) a false, fraudulent, or misleading:

24 (i) representation;

25 (ii) notice; or

26 (iii) advertisement;

27 (2) provide false information;

1 (3) make a false promise or representation relating to
2 employment;

3 (4) divide fees with or receive compensation from:

4 (A) a person exempt from registration under this
5 chapter under Section 2051.005; or

6 (B) a professional sports league or franchise,
7 including a representative or employee of the league or franchise;

8 (5) enter into a written or oral agreement with an
9 employee of an institution of higher education in which the athlete
10 agent offers a thing of value to the employee for the referral of
11 clients by the employee;

12 (6) offer a thing of value to induce the athlete to
13 enter into an agreement with the athlete agent in which the athlete
14 agent will represent the athlete; ~~and~~

15 (7) except as provided by this chapter, before an
16 athlete completes the athlete's last intercollegiate sports
17 ~~[football or basketball]~~ contest:

18 (A) directly contact the athlete; or

19 (B) enter into an oral or written agreement with
20 the athlete for the athlete agent to represent the athlete;

21 (8) furnish anything of value to any person other than
22 the athlete or another registered athlete agent to induce an
23 athlete to enter into an agreement with the athlete agent;

24 (9) initiate any contact with an athlete, except as
25 authorized by this chapter;

26 (10) fail to retain or permit inspection of the
27 records required to be retained by Section 2051.352;

- 1 (11) predate or postdate an agent contract; or
- 2 (12) fail to notify an athlete before the athlete
- 3 signs an agent contract that the signing may make the athlete
- 4 ineligible to participate in intercollegiate sports.

5 SECTION 11. Subsection (a), Section 2051.352, Occupations
6 Code, is amended to read as follows:

- 7 (a) An athlete agent shall maintain a record of:
 - 8 (1) each athlete represented by the athlete agent,
 - 9 including:
 - 10 (A) the name and address of the athlete;
 - 11 (B) fees paid by the athlete; and
 - 12 (C) services performed by the athlete agent for
 - 13 the athlete; ~~and~~
 - 14 (2) travel and entertainment expenses incurred by the
 - 15 athlete agent, including expenses for:
 - 16 (A) food and beverages;
 - 17 (B) hospitality rooms;
 - 18 (C) sporting events;
 - 19 (D) theater and music events; and
 - 20 (E) transportation, lodging, and admission
 - 21 relating to entertainment;
 - 22 (3) any agent contract entered into by the athlete
 - 23 agent; and
 - 24 (4) any direct costs incurred by the athlete agent in
 - 25 recruiting or soliciting an athlete to enter into an agent
 - 26 contract.

27 SECTION 12. Section 2051.402, Occupations Code, is amended

1 by adding Subsection (c) to read as follows:

2 (c) By acting as an athlete agent in this state, a
3 nonresident appoints the secretary of state as the nonresident's
4 agent for service of process in a civil action in this state related
5 to an act by the person as an athlete agent.

6 SECTION 13. Section 2051.551, Occupations Code, is amended
7 to read as follows:

8 Sec. 2051.551. CIVIL SUIT. (a) An institution of higher
9 education adversely affected by an athlete agent's or former
10 athlete's violation of this chapter may file suit against the
11 athlete agent or former athlete for damages.

12 (b) A cause of action under this section does not accrue
13 until the educational institution discovers or by the exercise of
14 reasonable diligence would have discovered the violation by the
15 athlete agent or former athlete.

16 (c) Any liability of the athlete agent or the former athlete
17 under this section is several and not joint.

18 (d) This chapter does not restrict the rights, remedies, or
19 defense of any person under any other law.

20 SECTION 14. (a) A registration under Chapter 2051,
21 Occupations Code, in effect on the effective date of this Act
22 continues in effect under the former law until it expires or is
23 revoked, and the former law is continued in effect for that purpose.

24 (b) A person who submits an application for registration as
25 an athlete agent under Chapter 2051, Occupations Code, that is
26 pending on the effective date of this Act must resubmit the
27 application under Chapter 2051, Occupations Code, as amended by

1 this Act, after the effective date for the application to be
2 effective.

3 (c) A contract entered into under Chapter 2051, Occupations
4 Code, as it existed immediately before the effective date of this
5 Act, is covered by the former law, and the former law is continued
6 in effect for that purpose.

7 SECTION 15. This Act takes effect September 1, 2003.