

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

Sec. 2051.006. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

In applying this chapter, consideration must be given to the need to promote uniformity of the law among states that have enacted similar laws.

SECTION 2. Section 2051.101, Occupations Code, is amended to read as follows:

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

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

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

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

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

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

6 (c) An agent [~~A~~] contract negotiated by an unregistered
7 athlete agent is void.

8 SECTION 3. Section 2051.102, Occupations Code, is amended
9 to read as follows:

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

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

16 (1) the applicant's:

17 (A) name;

18 (B) principal business address;

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

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

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

27 (3) whether the applicant or a person described by

1 Subdivision (5) has been subject to any of the following:

2 (A) a conviction of a crime that in this state is
3 a felony or a crime of moral turpitude;

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

7 (C) a sanction or suspension related to
8 occupational or professional conduct;

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

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

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

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

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

25 (d) If an applicant is a member of the State Bar of Texas,
26 the [~~an~~] application information required under Subsection (b)(5)
27 [~~(b)(2)~~] must include the name and address of each person who is

1 involved in the activities of the athlete agent. This subsection
2 does not require an applicant to state the name and address of a
3 member of a law firm or professional corporation who is not involved
4 in the business of the athlete agent.

5 (e) A person seeking certification as an athlete agent
6 under this chapter who holds a certificate of registration or
7 license as an athlete agent in another state may submit a copy of
8 the previous application and certificate or license instead of
9 submitting the application required by this section. The secretary
10 of state shall accept the application and the certificate or
11 license from the other state as an application for registration in
12 this state 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 application is submitted in this
15 state and the applicant certifies that the information contained in
16 the application is current;

17 (2) contains information substantially similar 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 4. Section 2051.105, Occupations Code, is amended
23 by amending Subsection (b) and adding Subsections (c) and (d) to
24 read as follows:

25 (b) The secretary of state may deny an application for
26 registration if the secretary of state determines the applicant has
27 engaged in conduct that has a significant adverse effect on the

1 applicant's fitness to act as an athlete agent. In making the
2 determination, the secretary of state may consider whether the
3 applicant has:

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

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

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

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

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

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

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

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

22 (1) how recently the conduct occurred;

23 (2) the nature of the conduct and the context in which
24 it occurred; and

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

26 (d) Judicial review of a denial of an application for
27 registration under Subsection (a) or (b) is by trial de novo and is

1 subject to Section 2001.173, Government Code.

2 SECTION 5. Section 2051.108, Occupations Code, is amended
3 by amending Subsection (a) and adding Subsection (e) to read as
4 follows:

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

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

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

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

22 (3) was signed by the applicant under penalty of
23 perjury.

24 SECTION 6. Section 2051.203, Occupations Code, is amended
25 by amending Subsection (a) and adding Subsection (d) to read as
26 follows:

27 (a) An agent contract or a financial services contract must

1 include:

2 (1) a schedule of fees, including:

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

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

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

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

14 (4) a description of any expenses of the agent the
15 athlete agrees to reimburse;

16 (5) the duration of the contract; and

17 (6) the date the contract was signed.

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

20 SECTION 7. Section 2051.204(a), Occupations Code, is
21 amended to read as follows:

22 (a) An agent contract or a financial services contract must
23 include the following notice:

24 (1) THIS ATHLETE AGENT IS REGISTERED WITH THE
25 SECRETARY OF STATE OF THE STATE OF TEXAS. REGISTRATION WITH THE
26 SECRETARY OF STATE DOES NOT IMPLY APPROVAL OR ENDORSEMENT BY THE
27 SECRETARY OF STATE OF THE COMPETENCE OF THE ATHLETE AGENT OR OF THE

1 SPECIFIC TERMS AND CONDITIONS OF THIS CONTRACT.

2 NOTICE TO CLIENT

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

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

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

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

19 SECTION 8. Section 2051.351(a), Occupations Code, is
20 amended to read as follows:

- 21 (a) An athlete agent may not:
- 22 (1) publish or cause to be published:
- 23 (A) false, fraudulent, or misleading
24 information; or
- 25 (B) a false, fraudulent, or misleading:
- 26 (i) representation;
- 27 (ii) notice; or

- 1 (iii) advertisement;
- 2 (2) provide false information;
- 3 (3) make a false promise or representation relating to
4 employment;
- 5 (4) divide fees with or receive compensation from:
- 6 (A) a person exempt from registration under this
7 chapter under Section 2051.005; or
- 8 (B) a professional sports league or franchise,
9 including a representative or employee of the league or franchise;
- 10 (5) enter into a written or oral agreement with an
11 employee of an institution of higher education in which the athlete
12 agent offers a thing of value to the employee for the referral of
13 clients by the employee;
- 14 (6) offer a thing of value to induce the athlete to
15 enter into an agreement with the athlete agent in which the athlete
16 agent will represent the athlete; ~~and~~
- 17 (7) except as provided by this chapter, before an
18 athlete completes the athlete's last intercollegiate football or
19 basketball contest:
- 20 (A) directly contact the athlete; or
- 21 (B) enter into an oral or written agreement with
22 the athlete for the athlete agent to represent the athlete;
- 23 (8) furnish anything of value to any person other than
24 the athlete or another registered athlete agent to induce an
25 athlete to enter into an agreement with the athlete agent;
- 26 (9) initiate contact with an athlete unless registered
27 under this chapter;

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

3 (11) predate or postdate an agent contract; or

4 (12) fail to notify an athlete before the athlete
5 signs an agent contract that the signing may make the athlete
6 ineligible to participate in intercollegiate sports.

7 SECTION 9. Section 2051.352(a), Occupations Code, is
8 amended to read as follows:

9 (a) An athlete agent shall maintain a record of:

10 (1) each athlete represented by the athlete agent,
11 including:

12 (A) the name and address of the athlete;

13 (B) fees paid by the athlete; and

14 (C) services performed by the athlete agent for
15 the athlete; ~~and~~

16 (2) travel and entertainment expenses incurred by the
17 athlete agent, including expenses for:

18 (A) food and beverages;

19 (B) hospitality rooms;

20 (C) sporting events;

21 (D) theater and music events; and

22 (E) transportation, lodging, and admission
23 relating to entertainment;

24 (3) any agent contract entered into by the athlete
25 agent; and

26 (4) any direct costs incurred by the athlete agent in
27 recruiting or soliciting an athlete to enter into an agent

1 contract.

2 SECTION 10. Section 2051.402, Occupations Code, is amended
3 by adding Subsection (c) to read as follows:

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

8 SECTION 11. Section 2051.551, Occupations Code, is amended
9 to read as follows:

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

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

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

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

21 SECTION 12. (a) A registration under Chapter 2051,
22 Occupations Code, in effect on the effective date of this Act
23 continues in effect under the former law until it expires or is
24 revoked, and the former law is continued in effect for that purpose.

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

1 application under Chapter 2051, Occupations Code, as amended by
2 this Act, after the effective date for the application to be
3 effective.

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

8 SECTION 13. This Act takes effect September 1, 2003.