

1-1 By: Brimer S.B. No. 292  
1-2 (In the Senate - Filed January 27, 2003; February 5, 2003,  
1-3 read first time and referred to Committee on Business and Commerce;  
1-4 May 12, 2003, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 8, Nays 0; May 12, 2003,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 292 By: Brimer

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the regulation of athlete agents.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Subdivision (2), Section 2051.001, Occupations  
1-13 Code, is amended to read as follows:

1-14 (2) "Athlete" means an individual who:

1-15 (A) is eligible to participate in  
1-16 intercollegiate sports contests as a member of a sports [football  
1-17 or basketball] team or as an individual competitor in a sport at an  
1-18 institution of higher education; or

1-19 (B) has participated as a member of an  
1-20 intercollegiate sports [football or basketball] team or as an  
1-21 individual competitor in an intercollegiate sport at an institution  
1-22 of higher education and has never signed an employment contract  
1-23 with a professional sports team.

1-24 SECTION 2. Section 2051.002, Occupations Code, is amended  
1-25 to read as follows:

1-26 Sec. 2051.002. PARTICIPATION IN INTERCOLLEGIATE SPORTS  
1-27 CONTESTS. An athlete is not eligible to participate in  
1-28 intercollegiate sports contests if the athlete:

1-29 (1) declares that the athlete is eligible for  
1-30 recruitment by a professional sports team; or

1-31 (2) has concluded, in the athlete's final year of  
1-32 eligibility, the athlete's final intercollegiate sports [football  
1-33 or basketball] contest, as determined by the governing body of the  
1-34 national association for the promotion and regulation of  
1-35 intercollegiate athletics of which the athlete's institution of  
1-36 higher education is a member.

1-37 SECTION 3. Subchapter A, Chapter 2051, Occupations Code, is  
1-38 amended by adding Section 2051.006 to read as follows:

1-39 Sec. 2051.006. UNIFORMITY OF APPLICATION AND CONSTRUCTION.  
1-40 In applying this chapter, consideration must be given to the need to  
1-41 promote uniformity of the law among states that have enacted  
1-42 similar laws.

1-43 SECTION 4. Section 2051.101, Occupations Code, is amended  
1-44 to read as follows:

1-45 Sec. 2051.101. REGISTRATION REQUIRED. (a) Except as  
1-46 provided by Subsection (b), a person may not act as [Unless] an  
1-47 athlete agent in this state or represent that the person is an  
1-48 athlete agent in this state unless the person holds a certificate of  
1-49 registration [is registered] under this chapter[, the athlete agent  
1-50 may not.

1-51 [(1) contact, directly or indirectly, an athlete while  
1-52 the athlete is eligible to participate in intercollegiate sports  
1-53 contests; or

1-54 [(2) enter into a contract with an athlete].

1-55 (b) Before the issuance of a certificate of registration  
1-56 under this chapter, a person may act as an athlete agent in this  
1-57 state for all purposes except signing an agent contract, if:

1-58 (1) an athlete or a person acting on behalf of the  
1-59 athlete initiates communication with the person; and

1-60 (2) within seven days after the date of the initial act  
1-61 as an athlete agent, the person submits an application for  
1-62 registration under this chapter.

1-63 (c) An agent [A] contract negotiated by an unregistered

2-1 athlete agent is void.

2-2 SECTION 5. Section 2051.102, Occupations Code, is amended  
 2-3 to read as follows:

2-4 Sec. 2051.102. APPLICATION REQUIREMENTS. (a) Except as  
 2-5 provided by Subsection (e), an [An] applicant for registration as  
 2-6 an athlete agent must apply on a form prescribed by the secretary of  
 2-7 state.

2-8 (b) An applicant must provide information required by the  
 2-9 secretary of state, including:

2-10 (1) the applicant's:  
 2-11 (A) name;  
 2-12 (B) principal business address;  
 2-13 (C) business or occupation for the five years  
 2-14 immediately preceding the date of application; and

2-15 (D) formal training, practical experience, and  
 2-16 educational background relating to the applicant's professional  
 2-17 activities as an athlete agent; ~~and]~~

2-18 (2) the name, sport, and last known team for each  
 2-19 person the applicant represented as an athlete agent during the  
 2-20 five years immediately preceding the date of application;

2-21 (3) whether the applicant or a person described by  
 2-22 Subdivision (5) has been subject to any of the following:

2-23 (A) a conviction of a crime that in this state is  
 2-24 a felony or a crime of moral turpitude;

2-25 (B) an administrative or a judicial  
 2-26 determination finding the applicant or other person made a false,  
 2-27 misleading, deceptive, or fraudulent representation;

2-28 (C) a sanction or suspension related to  
 2-29 occupational or professional conduct;

2-30 (D) a denial of an application for a certificate  
 2-31 of registration or license as an athlete agent; or

2-32 (E) a denial, revocation, or suspension of a  
 2-33 certificate of registration or license as an athlete agent;

2-34 (4) whether the applicant or a person described by  
 2-35 Subdivision (5) has engaged in conduct resulting in the imposition  
 2-36 on an athlete or educational institution of a sanction, suspension,  
 2-37 or declaration of ineligibility to participate in an  
 2-38 interscholastic or intercollegiate athletic event; and

2-39 (5) except as provided by Subsection (d), the name and  
 2-40 address of each person, except a bona fide employee on salary, who  
 2-41 is financially interested as a partner, associate, or profit sharer  
 2-42 in the applicant's business.

2-43 (c) An application~~[, if requested by the secretary of~~  
 2-44 ~~state,~~ shall include the names and addresses of three [five]  
 2-45 professional references.

2-46 (d) If an applicant is a member of the State Bar of Texas,  
 2-47 the ~~[an]~~ application information required under Subsection (b)(5)  
 2-48 ~~[(b)(2)]~~ must include the name and address of each person who is  
 2-49 involved in the activities of the athlete agent. This subsection  
 2-50 does not require an applicant to state the name and address of a  
 2-51 member of a law firm or professional corporation who is not involved  
 2-52 in the business of the athlete agent.

2-53 (e) A person seeking certification as an athlete agent under  
 2-54 this chapter who holds a certificate of registration or license as  
 2-55 an athlete agent in another state may submit a copy of the previous  
 2-56 application and certificate or license instead of submitting the  
 2-57 application required by this section. The secretary of state shall  
 2-58 accept the application and the certificate or license from the  
 2-59 other state as an application for registration in this state if the  
 2-60 application to the other state:

2-61 (1) was submitted to the other state not earlier than  
 2-62 the 180th day before the date the application is submitted in this  
 2-63 state and the applicant certifies that the information contained in  
 2-64 the application is current;

2-65 (2) contains information substantially similar to or  
 2-66 more comprehensive than the information required by this section;  
 2-67 and

2-68 (3) was signed by the applicant under penalty of  
 2-69 perjury.

3-1 SECTION 6. Section 2051.105, Occupations Code, is amended  
 3-2 by amending Subsection (b) and adding Subsections (c) and (d) to  
 3-3 read as follows:

3-4 (b) The secretary of state may deny an application for  
 3-5 registration if the secretary of state determines the applicant has  
 3-6 engaged in conduct that has a significant adverse effect on the  
 3-7 applicant's fitness to act as an athlete agent. In making the  
 3-8 determination, the secretary of state may consider whether the  
 3-9 applicant has:

3-10 (1) made a materially false, misleading, deceptive, or  
 3-11 fraudulent representation in the application or as an athlete  
 3-12 agent;

3-13 (2) engaged in conduct that would disqualify the  
 3-14 applicant from serving in a fiduciary capacity;

3-15 (3) engaged in conduct prohibited by Section 2051.351;

3-16 (4) had a registration or licensure as an athlete  
 3-17 agent denied, suspended, or revoked;

3-18 (5) been denied renewal of registration or licensure  
 3-19 as an athlete agent in any state;

3-20 (6) engaged in conduct that resulted in the imposition  
 3-21 on an athlete or educational institution of a sanction, suspension,  
 3-22 or declaration of ineligibility to participate in an  
 3-23 interscholastic or intercollegiate athletic event; or

3-24 (7) engaged in conduct that adversely reflects on the  
 3-25 applicant's credibility, honesty, or integrity.

3-26 (c) In making a determination under Subsection (b), the  
 3-27 secretary of state shall consider:

3-28 (1) how recently the conduct occurred;

3-29 (2) the nature of the conduct and the context in which  
 3-30 it occurred; and

3-31 (3) any other relevant conduct of the applicant.

3-32 (d) Judicial review of a denial of an application for  
 3-33 registration under Subsection (a) or (b) is by trial de novo and is  
 3-34 subject to Section 2001.173, Government Code.

3-35 SECTION 7. Section 2051.108, Occupations Code, is amended  
 3-36 by amending Subsection (a) and adding Subsection (e) to read as  
 3-37 follows:

3-38 (a) Except as provided by Subsection (e), an [An] applicant  
 3-39 for renewal of registration must apply on a form prescribed by the  
 3-40 secretary of state.

3-41 (e) A person who has submitted an application for renewal of  
 3-42 registration or licensure as an athlete agent in another state may  
 3-43 submit a copy of the application and certificate of registration or  
 3-44 license from the other state instead of submitting the application  
 3-45 required by this section. The secretary of state shall accept the  
 3-46 application for renewal from the other state as an application for  
 3-47 renewal under this section if the application to the other state:

3-48 (1) was submitted to the other state not earlier than  
 3-49 the 180th day before the date the renewal application is submitted  
 3-50 in this state and the applicant certifies that the information  
 3-51 contained in the application is current;

3-52 (2) contains information substantially similar to or  
 3-53 more comprehensive than the information required by this section;  
 3-54 and

3-55 (3) was signed by the applicant under penalty of  
 3-56 perjury.

3-57 SECTION 8. Section 2051.203, Occupations Code, is amended  
 3-58 by amending Subsection (a) and adding Subsection (d) to read as  
 3-59 follows:

3-60 (a) An agent contract or a financial services contract must  
 3-61 include:

3-62 (1) a schedule of fees, including:

3-63 (A) the amount and method of computing the  
 3-64 consideration to be paid by the athlete for services to be provided  
 3-65 by the athlete agent under the contract; and

3-66 (B) any other consideration the athlete agent  
 3-67 received or will receive from any other source for entering into the  
 3-68 contract or for providing the services; [and]

3-69 (2) a description of the professional services that

- 4-1 the athlete agent will perform for the athlete;
- 4-2 (3) the name of any person not listed in the
- 4-3 application for registration or renewal of registration who will be
- 4-4 compensated because the athlete signed the agent contract;
- 4-5 (4) a description of any expenses of the athlete agent
- 4-6 the athlete agrees to reimburse;
- 4-7 (5) the duration of the contract; and
- 4-8 (6) the date the contract was signed.

4-9 (d) The athlete agent shall give a signed copy of the  
 4-10 contract to the athlete at the time the contract is signed.

4-11 SECTION 9. Subsection (a), Section 2051.204, Occupations  
 4-12 Code, is amended to read as follows:

4-13 (a) An agent contract or a financial services contract must  
 4-14 include the following notice:

4-15 (1) THIS ATHLETE AGENT IS REGISTERED WITH THE  
 4-16 SECRETARY OF STATE OF THE STATE OF TEXAS. REGISTRATION WITH THE  
 4-17 SECRETARY OF STATE DOES NOT IMPLY APPROVAL OR ENDORSEMENT BY THE  
 4-18 SECRETARY OF STATE OF THE COMPETENCE OF THE ATHLETE AGENT OR OF THE  
 4-19 SPECIFIC TERMS AND CONDITIONS OF THIS CONTRACT.

4-20 NOTICE TO CLIENT

4-21 (2) DO NOT SIGN THIS CONTRACT UNTIL YOU HAVE READ IT OR  
 4-22 IF IT CONTAINS BLANK SPACES.

4-23 (3) IF YOU DECIDE THAT YOU DO NOT WISH TO PURCHASE THE  
 4-24 SERVICES OF THE ATHLETE AGENT, YOU MAY CANCEL THIS CONTRACT BY  
 4-25 NOTIFYING THE ATHLETE AGENT IN WRITING OF YOUR DESIRE TO CANCEL THE  
 4-26 CONTRACT NOT LATER THAN THE 16TH DAY AFTER THE DATE ON WHICH YOU  
 4-27 SIGN THIS CONTRACT. YOU MAY NOT WAIVE THE RIGHT TO CANCEL THIS  
 4-28 CONTRACT. IF YOU CANCEL THIS CONTRACT WITHIN 16 DAYS, YOU ARE NOT  
 4-29 REQUIRED TO PAY ANY CONSIDERATION UNDER THE CONTRACT OR RETURN ANY  
 4-30 CONSIDERATION RECEIVED.

4-31 (4) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS AN  
 4-32 ATHLETE IN YOUR SPORT. CANCELLATION OF THIS CONTRACT MAY NOT  
 4-33 REINSTATE YOUR ELIGIBILITY.

4-34 (5) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS  
 4-35 AFTER ENTERING INTO THIS CONTRACT BOTH YOU AND YOUR ATHLETE AGENT  
 4-36 MUST NOTIFY YOUR ATHLETIC DIRECTOR.

4-37 SECTION 10. Subsection (a), Section 2051.351, Occupations  
 4-38 Code, is amended to read as follows:

4-39 (a) An athlete agent may not:

4-40 (1) publish or cause to be published:  
 4-41 (A) false, fraudulent, or misleading  
 4-42 information; or

4-43 (B) a false, fraudulent, or misleading:  
 4-44 (i) representation;  
 4-45 (ii) notice; or  
 4-46 (iii) advertisement;

4-47 (2) provide false information;  
 4-48 (3) make a false promise or representation relating to  
 4-49 employment;

4-50 (4) divide fees with or receive compensation from:  
 4-51 (A) a person exempt from registration under this  
 4-52 chapter under Section 2051.005; or

4-53 (B) a professional sports league or franchise,  
 4-54 including a representative or employee of the league or franchise;

4-55 (5) enter into a written or oral agreement with an  
 4-56 employee of an institution of higher education in which the athlete  
 4-57 agent offers a thing of value to the employee for the referral of  
 4-58 clients by the employee;

4-59 (6) offer a thing of value to induce the athlete to  
 4-60 enter into an agreement with the athlete agent in which the athlete  
 4-61 agent will represent the athlete; ~~and~~

4-62 (7) except as provided by this chapter, before an  
 4-63 athlete completes the athlete's last intercollegiate sports  
 4-64 ~~[football or basketball]~~ contest:

4-65 (A) directly contact the athlete; or

4-66 (B) enter into an oral or written agreement with  
 4-67 the athlete for the athlete agent to represent the athlete;

4-68 (8) furnish anything of value to any person other than  
 4-69 the athlete or another registered athlete agent to induce an

5-1 athlete to enter into an agreement with the athlete agent;  
 5-2 (9) initiate any contact with an athlete, except as  
 5-3 authorized by this chapter;  
 5-4 (10) fail to retain or permit inspection of the  
 5-5 records required to be retained by Section 2051.352;  
 5-6 (11) predate or postdate an agent contract; or  
 5-7 (12) fail to notify an athlete before the athlete  
 5-8 signs an agent contract that the signing may make the athlete  
 5-9 ineligible to participate in intercollegiate sports.

5-10 SECTION 11. Subsection (a), Section 2051.352, Occupations  
 5-11 Code, is amended to read as follows:

5-12 (a) An athlete agent shall maintain a record of:  
 5-13 (1) each athlete represented by the athlete agent,  
 5-14 including:  
 5-15 (A) the name and address of the athlete;  
 5-16 (B) fees paid by the athlete; and  
 5-17 (C) services performed by the athlete agent for  
 5-18 the athlete; ~~and~~  
 5-19 (2) travel and entertainment expenses incurred by the  
 5-20 athlete agent, including expenses for:  
 5-21 (A) food and beverages;  
 5-22 (B) hospitality rooms;  
 5-23 (C) sporting events;  
 5-24 (D) theater and music events; and  
 5-25 (E) transportation, lodging, and admission  
 5-26 relating to entertainment;  
 5-27 (3) any agent contract entered into by the athlete  
 5-28 agent; and  
 5-29 (4) any direct costs incurred by the athlete agent in  
 5-30 recruiting or soliciting an athlete to enter into an agent  
 5-31 contract.

5-32 SECTION 12. Section 2051.402, Occupations Code, is amended  
 5-33 by adding Subsection (c) to read as follows:

5-34 (c) By acting as an athlete agent in this state, a  
 5-35 nonresident appoints the secretary of state as the nonresident's  
 5-36 agent for service of process in a civil action in this state related  
 5-37 to an act by the person as an athlete agent.

5-38 SECTION 13. Section 2051.551, Occupations Code, is amended  
 5-39 to read as follows:

5-40 Sec. 2051.551. CIVIL SUIT. (a) An institution of higher  
 5-41 education adversely affected by an athlete agent's or former  
 5-42 athlete's violation of this chapter may file suit against the  
 5-43 athlete agent or former athlete for damages.

5-44 (b) A cause of action under this section does not accrue  
 5-45 until the educational institution discovers or by the exercise of  
 5-46 reasonable diligence would have discovered the violation by the  
 5-47 athlete agent or former athlete.

5-48 (c) Any liability of the athlete agent or the former athlete  
 5-49 under this section is several and not joint.

5-50 (d) This chapter does not restrict the rights, remedies, or  
 5-51 defense of any person under any other law.

5-52 SECTION 14. (a) A registration under Chapter 2051,  
 5-53 Occupations Code, in effect on the effective date of this Act  
 5-54 continues in effect under the former law until it expires or is  
 5-55 revoked, and the former law is continued in effect for that purpose.

5-56 (b) A person who submits an application for registration as  
 5-57 an athlete agent under Chapter 2051, Occupations Code, that is  
 5-58 pending on the effective date of this Act must resubmit the  
 5-59 application under Chapter 2051, Occupations Code, as amended by  
 5-60 this Act, after the effective date for the application to be  
 5-61 effective.

5-62 (c) A contract entered into under Chapter 2051, Occupations  
 5-63 Code, as it existed immediately before the effective date of this  
 5-64 Act, is covered by the former law, and the former law is continued  
 5-65 in effect for that purpose.

5-66 SECTION 15. This Act takes effect September 1, 2003.

5-67 \* \* \* \* \*