

BILL ANALYSIS

Senate Research Center

H.B. 1123
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Business & Commerce
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Committee Report (Amended)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

If a student-athlete receives money, gifts, or anything of value from an athlete agent, the student-athlete can lose an athletic scholarship and the student-athlete's college or university can face severe consequences. H.B. 1123 seeks to hold athlete agents accountable for their actions by providing stricter administrative and criminal penalties for agents who violate certain regulations and by requiring an athlete agent to deposit a surety bond with the secretary of state before contacting an athlete or entering into an agent contract with an athlete in Texas. The bill also attempts to conform agent-athlete contracts with forms approved by national professional sports associations like the National Football League and Major League Baseball.

H.B. 1123 amends current law relating to the regulation of athlete agents, and provides administrative and criminal penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the secretary of state in SECTION 8 (Section 2051.201, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2051.001, Occupations Code, by amending Subdivision (3) and adding Subdivision (5-a), to redefine "athlete agent" and to define "national professional sports association."

SECTION 2. Amends Sections 2051.052(a) and (b), Occupations Code, as follows:

(a) Requires the secretary of state (SOS) to publish, rather than at least once a year to publish, on SOS's Internet website information that prescribes the compliance responsibilities of an institution of higher education under this chapter.

(b) Requires SOS to notify the athletic director or other appropriate official of each institution of higher education of any change to the compliance responsibilities of the institution under this chapter, rather than mail, return receipt requested, a copy of the compliance responsibilities published under Subsection (a) to the athletic director or other appropriate official of each institution of higher education.

SECTION 3. Amends Section 2051.101, Occupations Code, by amending Subsections (a) and (b) and adding Subsections (a-1), (a-2), (d), and (e), as follows:

(a) Prohibits an individual, rather than person, except as provided by Subsection (b), from acting as an athlete agent in this state or representing that the individual is an athlete agent in this state unless the individual holds a certificate of registration under this chapter as a professional athlete agent, or a limited athlete agent. Makes conforming changes.

(a-1) Prohibits an individual from registering as a professional athlete agent under this chapter unless the individual is certified as an agent by a national professional sports association.

(a-2) Authorizes an individual who is not certified as an agent by a national professional sports association to register only as a limited athlete agent. Authorizes a limited athlete agent to only represent an athlete in a sport that does not have a national professional sports association.

(b) Makes conforming changes.

(d) Provides that an agent contract with an athlete in a sport for which there is a national professional sports association is void if the contract is negotiated by an athlete agent holding a limited certificate of registration.

(e) Prohibits a person who is not an individual from registering as an athlete agent in this state.

SECTION 4. Amends Sections 2051.102(b) and (e), Occupations Code, as follows:

(b) Requires an applicant to provide information required by SOS, including:

(1)-(2) Makes no changes to these subdivisions;

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

(A) an arrest for a crime that in this state is an offense other than a Class C misdemeanor;

(B) a conviction of a crime that in this state is a Class A or Class B misdemeanor, a felony, or a crime of moral turpitude;

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

(D) a sanction or suspension related to occupational or professional conduct;

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

(F) a denial, revocation, or suspension of a certificate of registration or license as an athlete agent.

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

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

(6) the name and address of each national professional sports association that has certified the applicant as an agent.

Makes nonsubstantive changes.

(e) Makes a conforming change.

SECTION 5. Amends Sections 2051.108(b) and (e), Occupations Code, as follows:

(b) Requires that a renewal application include:

(1) the name, address, and telephone number of each athlete for whom the athlete agent is performing professional services for compensation on the date of the renewal application;

(2) the name, address, and telephone number of each athlete for whom the athlete agent has performed professional services for compensation during the three years immediately preceding the date of the renewal application but for whom the athlete agent is not performing professional services on the date of the renewal application;

(3) the name and address of each national professional sports association by which the athlete agent is currently certified; and

(4) any other information prescribed by SOS.

(e) Makes a conforming change.

SECTION 6. Amends Subchapter C, Chapter 2051, Occupations Code, by adding Sections 2051.109 and 2051.110, as follows:

Sec. 2051.109. CONTINUING NOTIFICATION REQUIREMENT. (a) Requires a registered athlete agent to notify SOS in writing of the athlete agent's:

(1) arrest for a crime that in this state is an offense other than a Class C misdemeanor; or

(2) decertification as an agent by a national professional sports association that has become final by the conclusion of the appeal process provided by the association.

(b) Requires the athlete agent to notify SOS as required under this section not later than 30 days after the date of the arrest or the date that the decertification becomes final.

Sec. 2051.110. EFFECT OF DECERTIFICATION BY PROFESSIONAL ASSOCIATION. Requires SOS to revoke the certificate of registration of an athlete agent decertified by a national professional sports association.

SECTION 7. Amends Section 2051.151, Occupations Code, by amending Subsections (a) and (b) and adding Subsection (a-1), as follows:

(a) Requires an athlete agent to, before contacting an athlete or entering into an agent contract with an athlete in this state, deposit with SOS a surety bond, in the amount of \$50,000, payable to the state and conditioned on:

(1) the athlete agent complying with this chapter;

(2) the payment of any administrative penalty assessed under Subchapter J; and

(3) the payment of any damages awarded to an institution of higher education or an athlete as a result of the athlete agent offering or providing a thing of value to an athlete or a family member of the athlete.

(a-1) Creates this subsection from existing text and makes no further changes.

(b) Requires an athlete agent to maintain a bond deposited under Subsection (a) or (a-1) for not less than two years after the later of:

(1) the date that the athlete agent ceases to provide financial services to an athlete; or

(2) the date that the athlete agent's certificate of registration expires or is revoked.

SECTION 8. Amends Section 2051.201, Occupations Code, as follows:

Sec. 2051.201. CONTRACT FORM. (a) Creates this subsection from existing text and makes no further changes.

(b) Requires SOS by rule to require that, to the extent practicable, the form for an agent contract or financial services contract conforms to the contract form approved by the national professional sports association for the sport in which the athlete will be represented.

SECTION 9. Amends Section 2051.205(a), Occupations Code, to require a registered athlete agent to, not later than the 10th, rather than fifth, day after the date an athlete signs an agent contract or financial services contract, file a copy of the contract with SOS, and, if the athlete is a student at an institution of higher education, the athletic director of the athlete's institution.

SECTION 10. Amends Section 2051.351(a), Occupations Code, as follows:

(a) Prohibits an athlete agent from:

(1)-(3) Makes no changes to these subdivisions;

(4) dividing fees with or receiving compensation from a person exempt from registration under this chapter under Section 2051.005; a professional sports league or franchise, including a representative or employee of the league or franchise; or an institution of higher education, including a representative or employee of the institution's athletics department;

(5) Makes no changes to this subdivision;

(6) before an athlete completes the athlete's last intercollegiate sports contest, offering a thing of value to the athlete or an individual related to the athlete within the second degree by affinity or consanguinity to induce the athlete to enter into an agreement with the athlete agent in which the athlete agent will represent the athlete;

(7) before an athlete completes the athlete's last intercollegiate sports contest, furnishing a thing of value to the athlete or an individual related to the athlete within the second degree by affinity or consanguinity;

(8) excepting as provided by this chapter, before an athlete completes the athlete's last intercollegiate sports contest:

(A) directly contacting the athlete; or

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

(9) furnishing anything of value to any person other than the athlete or another registered athlete agent to induce an athlete to enter into an agreement with the athlete agent;

(10) initiating any contact with an athlete, except as authorized by this chapter;

(11) failing to retain or permit inspection of the records required to be retained by Section 2051.352;

(12) predating or postdate an agent contract;

(13) failing to notify an athlete before the athlete signs an agent contract that the signing may make the athlete ineligible to participate in intercollegiate sports; or

(14) committing an act or causing a person to commit an act on the athlete agent's behalf that causes an athlete to violate a rule of the national association for the promotion and regulation of intercollegiate athletics of which the athlete's institution of higher education is a member.

Makes nonsubstantive changes.

SECTION 11. Amends Section 2051.451(b), Occupations Code, to require SOS to determine the amount of a penalty assessed under Subsection (a), except that the amount is prohibited from exceeding \$50,000 for a violation of Section 2051.351(a)(7) or (14); or \$25,000 for any other violation.

SECTION 12. Amends Subchapter J, Chapter 2051, Occupations Code, by adding Section 2051.457, as follows:

Sec. 2051.457. FAILURE TO PAY ADMINISTRATIVE PENALTY. (a) Authorizes SOS, if an athlete agent fails to pay the administrative penalty and does not request a hearing as provided by Section 2051.453, to revoke the agent's certificate of registration, refuse to renew the agent's certificate of registration, or refuse to issue a certificate of registration to the agent.

(b) Authorizes SOS, if, after a hearing, an athlete agent fails to pay the administrative penalty as required by Section 2051.454, to revoke the agent's certificate of registration, refuse to renew the agent's certificate of registration, or refuse to issue a certificate of registration to the agent.

SECTION 13. Amends Section 2051.501, Occupations Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Provides that except as provided by Subsection (c), an offense under this section is a Class A misdemeanor.

(c) Provides that an offense under this section committed by an athlete agent who intentionally or knowingly violates Section 2051.351(a)(7) or (14) is a third degree felony.

SECTION 14. Amends Subchapter K, Chapter 2051, Occupations Code, by adding Section 2051.502, as follows:

Sec. 2051.502. NOTICE OF CRIMINAL OFFENSE. Requires SOS to send notice of an athlete agent's conviction of an offense under Section 2051.501 to each national professional sports association that has certified the agent.

SECTION 15. Amends the heading to Subchapter L, Chapter 2051, Occupations Code, to read as follows:

SUBCHAPTER L. CIVIL LIABILITY

SECTION 16. Amends Section 2051.551, Occupations Code, by amending Subsections (a), (b), and (c) and adding Subsection (a-1), as follows:

(a) Authorizes an institution of higher education adversely affected by an athlete agent's, rather than an athlete agent's or former athlete's, violation of this chapter to file suit against the athlete agent for damages. Makes a conforming change.

(a-1) Authorizes an athlete adversely affected by an athlete agent's violation of Section 2051.351(a)(7) or (14) to file suit against the athlete agent for damages.

(b) Provides that a cause of action under Subsection (a), rather than under this section, does not accrue until the educational institution discovers or by the exercise of reasonable diligence would have discovered the violation by the athlete agent. Makes a conforming change.

(c) Provides that any liability of the athlete agent under this section is several and not joint.

SECTION 17. Amends Section 2051.552, Occupations Code, as follows:

Sec. 2051.552. ADVERSELY AFFECTED. (a) Creates this subsection from existing text and makes no further changes.

(b) Provides that an athlete is adversely affected by an athlete agent's violation of Section 2051.351(a)(7) or (14) if:

(1) the athlete agent's violation causes a national association for the promotion and regulation of intercollegiate athletics to disqualify or suspend the athlete from participating in intercollegiate sports contests; and

(2) the disqualification or suspension of the athlete causes the athlete to suffer an adverse financial impact.

SECTION 18. Amends Section 2051.553, Occupations Code, to authorize a plaintiff, rather than an institution of higher education, that prevails in a civil suit filed under Section 2051.551 to recover actual damages; exemplary damages; court costs; and reasonable attorney's fees.

SECTION 19. Repealers: Sections 2051.103 (Corporation, Association, or Partnership Applicant), 2051.104 (Supplemental Application Requirements), and 2051.153 (Exemption From Bond Requirements for Agent Only Contracts).

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

(b) Requires that an individual who submits an application required by Chapter 2051, Occupations Code, that is pending on the effective date of this Act to resubmit an application as required by Chapter 2051, Occupations Code, as amended by this Act.

(c) Provides that the change in law made by this Act applies only to an offense committed on or after the effective date of this Act. Provides that an offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. Provides that for purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

(d) Requires SOS, not later than January 1, 2012, to:

(1) by letter notify each institution of higher education that would have received a copy of compliance responsibilities by mail from SOS under former Section 2051.052, Occupations Code, of the changes in law made by this Act; and

(2) post on SOS's Internet website the compliance responsibilities of institutions of higher education under Chapter 2051, Occupations Code, as required by Section 2051.052, Occupations Code, as amended by this Act.

SECTION 21. Effective date: September 1, 2011.

SUMMARY OF COMMITTEE CHANGES

(1) Amends SECTION 4, page 4, lines 8-10, by striking "an arrest for a crime that in this state is an offense other than a Class C misdemeanor;"

(2) Amends SECTION 4, page 4, lines 13-20, by relettering the paragraphs of Section 2051.102(b)(3), Occupations Code, accordingly.

(3) Amends SECTION 6, page 7, line 10, by striking "arrest for" and substituting "conviction of".

(4) Amends SECTION 6, page 7, line 17, by striking "the arrest" and substituting "conviction".