

By: Dutton

H.B. No. 1123

Substitute the following for H.B. No. 1123:

By: Menendez

C.S.H.B. No. 1123

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of athlete agents; providing administrative and criminal penalties.

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

SECTION 1. Section 2051.001, Occupations Code, is amended by amending Subdivision (3) and adding Subdivision (5-a) to read as follows:

(3) "Athlete agent" means an individual [~~a person~~] who:

(A) for compensation, directly or indirectly recruits or solicits an athlete to enter into an agent contract, a financial services contract, or a professional sports services contract with that individual [~~person~~] or another person; or

(B) for a fee, procures, offers, promises, or attempts to obtain employment for an athlete with a professional sports team.

(5-a) "National professional sports association" means an organization that licenses or certifies athlete agents to represent athletes in a particular professional sport. The term includes the National Football League Players Association, National Basketball Players Association, Major League Baseball Players Association, National Hockey League Players' Association, and United States Soccer Federation.

SECTION 2. Sections 2051.052(a) and (b), Occupations Code,

1 are amended to read as follows:

2 (a) The secretary of state shall~~[, at least once a year,]~~
3 publish on the secretary of state's Internet website information
4 that prescribes the compliance responsibilities of an institution
5 of higher education under this chapter.

6 (b) The secretary shall notify ~~[mail, return receipt~~
7 ~~requested, a copy of the compliance responsibilities published~~
8 ~~under Subsection (a) to]~~ the athletic director or other appropriate
9 official of each institution of higher education of any change to
10 the compliance responsibilities of the institution under this
11 chapter.

12 SECTION 3. Section 2051.101, Occupations Code, is amended
13 by amending Subsections (a) and (b) and adding Subsections (a-1),
14 (a-2), (d), and (e) to read as follows:

15 (a) Except as provided by Subsection (b), an individual ~~[a~~
16 ~~person]~~ may not act as an athlete agent in this state or represent
17 that the individual ~~[person]~~ is an athlete agent in this state
18 unless the individual ~~[person]~~ holds a certificate of registration
19 under this chapter as:

20 (1) a professional athlete agent; or

21 (2) a limited athlete agent.

22 (a-1) An individual may not register as a professional
23 athlete agent under this chapter unless the individual is certified
24 as an agent by a national professional sports association.

25 (a-2) An individual who is not certified as an agent by a
26 national professional sports association may register only as a
27 limited athlete agent. A limited athlete agent may only represent

1 an athlete in a sport that does not have a national professional
2 sports association.

3 (b) Before the issuance of a certificate of registration
4 under this chapter, an individual [~~a person~~] may act as an athlete
5 agent in this state for all purposes except signing an agent
6 contract, if:

7 (1) an athlete or a person acting on behalf of the
8 athlete initiates communication with the individual [~~person~~]; and

9 (2) within seven days after the date of the initial act
10 as an athlete agent, the individual [~~person~~] submits an application
11 for registration under this chapter.

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

16 (e) A person who is not an individual may not register as an
17 athlete agent in this state.

18 SECTION 4. Sections 2051.102(b) and (e), Occupations Code,
19 are amended to read as follows:

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

22 (1) the applicant's:

23 (A) name;

24 (B) principal business address;

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

27 (D) formal training, practical experience, and

1 educational background relating to the applicant's professional
2 activities as an athlete agent;

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

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

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

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

13 (C) [~~(B)~~] an administrative or a judicial
14 determination finding the applicant or other person made a false,
15 misleading, deceptive, or fraudulent representation;

16 (D) [~~(C)~~] a sanction or suspension related to
17 occupational or professional conduct;

18 (E) [~~(D)~~] a denial of an application for a
19 certificate of registration or license as an athlete agent; or

20 (F) [~~(E)~~] a denial, revocation, or suspension of
21 a certificate of registration or license as an athlete agent;

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

27 (5) except as provided by Subsection (d), the name and

1 address of each person, except a bona fide employee on salary, who
2 is financially interested as a partner, associate, or profit sharer
3 in the applicant's business; and

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

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

15 (1) was submitted to the other state not earlier than
16 the 180th day before the date the application is submitted in this
17 state and the applicant certifies that the information contained in
18 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 5. Sections 2051.108(b) and (e), Occupations Code,
25 are amended to read as follows:

26 (b) A renewal application must include:

27 (1) the name, ~~and~~ address, and telephone number of

1 each athlete for whom the athlete agent is performing professional
2 services for compensation on the date of the renewal application;

3 (2) the name, ~~[and]~~ address, and telephone number of
4 each athlete for whom the athlete agent has performed professional
5 services for compensation during the three years immediately
6 preceding the date of the renewal application but for whom the
7 athlete agent is not performing professional services on the date
8 of the renewal application; ~~[and]~~

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

12 (4) any other information prescribed by the secretary
13 of state.

14 (e) An individual ~~[A person]~~ who has submitted an
15 application for renewal of registration or licensure as an athlete
16 agent in another state may submit a copy of the application and
17 certificate of registration or license from the other state instead
18 of submitting the application required by this section. The
19 secretary of state shall accept the application for renewal from
20 the other state as an application for renewal under this section if
21 the application to the other state:

22 (1) was submitted to the other state not earlier than
23 the 180th day before the date the renewal application is submitted
24 in this state and the applicant certifies that the information
25 contained in the application is current;

26 (2) contains information substantially similar to or
27 more comprehensive than the information required by this section;

1 and

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

4 SECTION 6. Subchapter C, Chapter 2051, Occupations Code, is
5 amended by adding Sections 2051.109 and 2051.110 to read as
6 follows:

7 Sec. 2051.109. CONTINUING NOTIFICATION REQUIREMENT. (a) A
8 registered athlete agent shall notify the secretary of state in
9 writing of the athlete agent's:

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

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

15 (b) The athlete agent shall notify the secretary of state as
16 required under this section not later than 30 days after the date of
17 the arrest or the date that the decertification becomes final.

18 Sec. 2051.110. EFFECT OF DECERTIFICATION BY PROFESSIONAL
19 ASSOCIATION. The secretary of state shall revoke the certificate
20 of registration of an athlete agent decertified by a national
21 professional sports association.

22 SECTION 7. Section 2051.151, Occupations Code, is amended
23 by amending Subsections (a) and (b) and adding Subsection (a-1) to
24 read as follows:

25 (a) An athlete agent shall, before contacting an athlete or
26 entering into an agent contract with an athlete in this state,
27 deposit with the secretary of state a surety bond, in the amount of

1 \$50,000, payable to the state and conditioned on:

2 (1) the athlete agent complying with this chapter;

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

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

9 (a-1) An athlete agent shall, before entering into a
10 financial services contract with an athlete, deposit with the
11 secretary of state a surety bond, in the amount of \$100,000, payable
12 to the state and conditioned on:

13 (1) the athlete agent complying with this chapter;

14 (2) the payment of money owed to an individual or group
15 of individuals when the athlete agent or the athlete agent's
16 representative or agent receives the money; and

17 (3) the payment of damages to an athlete caused by the
18 intentional misrepresentation, fraud, deceit, or unlawful or
19 negligent act or omission of the athlete agent or of the athlete
20 agent's representative or employee while acting within the scope of
21 the financial services contract.

22 (b) An athlete agent shall maintain a bond deposited under
23 Subsection (a) or (a-1) for not less than two years after the later
24 of:

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

27 (2) the date that the athlete agent's certificate of

1 registration expires or is revoked.

2 SECTION 8. Section 2051.201, Occupations Code, is amended
3 to read as follows:

4 Sec. 2051.201. CONTRACT FORM. (a) A registered athlete
5 agent must use a form approved by the secretary of state for any
6 agent contract or financial services contract.

7 (b) The secretary of state shall by rule require that, to
8 the extent practicable, the form for an agent contract or financial
9 services contract conforms to the contract form approved by the
10 national professional sports association for the sport in which the
11 athlete will be represented.

12 SECTION 9. Section 2051.205(a), Occupations Code, is
13 amended to read as follows:

14 (a) A registered athlete agent shall, not later than the
15 10th [~~fifth~~] day after the date an athlete signs an agent contract
16 or financial services contract, file a copy of the contract with:

- 17 (1) the secretary of state; and
18 (2) if the athlete is a student at an institution of
19 higher education, the athletic director of the athlete's
20 institution.

21 SECTION 10. Section 2051.351(a), Occupations Code, is
22 amended to read as follows:

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

- 1 (i) representation;
- 2 (ii) notice; or
- 3 (iii) advertisement;
- 4 (2) provide false information;
- 5 (3) make a false promise or representation relating to
- 6 employment;
- 7 (4) divide fees with or receive compensation from:
- 8 (A) a person exempt from registration under this
- 9 chapter under Section 2051.005; [~~or~~]
- 10 (B) a professional sports league or franchise,
- 11 including a representative or employee of the league or franchise;
- 12 or
- 13 (C) an institution of higher education,
- 14 including a representative or employee of the institution's
- 15 athletics department;
- 16 (5) enter into a written or oral agreement with an
- 17 employee of an institution of higher education in which the athlete
- 18 agent offers a thing of value to the employee for the referral of
- 19 clients by the employee;
- 20 (6) before an athlete completes the athlete's last
- 21 intercollegiate sports contest, offer a thing of value to the
- 22 athlete or an individual related to the athlete within the second
- 23 degree by affinity or consanguinity to induce the athlete to enter
- 24 into an agreement with the athlete agent in which the athlete agent
- 25 will represent the athlete;
- 26 (7) before an athlete completes the athlete's last
- 27 intercollegiate sports contest, furnish a thing of value to the

1 athlete or an individual related to the athlete within the second
2 degree by affinity or consanguinity;

3 (8) [~~(7)~~] except as provided by this chapter, before
4 an athlete completes the athlete's last intercollegiate sports
5 contest:

6 (A) directly contact the athlete; or

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

9 (9) [~~(8)~~] furnish anything of value to any person
10 other than the athlete or another registered athlete agent to
11 induce an athlete to enter into an agreement with the athlete agent;

12 (10) [~~(9)~~] initiate any contact with an athlete,
13 except as authorized by this chapter;

14 (11) [~~(10)~~] fail to retain or permit inspection of the
15 records required to be retained by Section 2051.352;

16 (12) [~~(11)~~] predate or postdate an agent contract;
17 [~~or~~]

18 (13) [~~(12)~~] fail to notify an athlete before the
19 athlete signs an agent contract that the signing may make the
20 athlete ineligible to participate in intercollegiate sports; or

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

26 SECTION 11. Section 2051.451(b), Occupations Code, is
27 amended to read as follows:

1 (b) The secretary shall determine the amount of a penalty
2 assessed under Subsection (a), except that the amount may not
3 exceed:

4 (1) \$50,000 for a violation of Section 2051.351(a)(7)
5 or (14); or

6 (2) \$25,000 for any other violation.

7 SECTION 12. Subchapter J, Chapter 2051, Occupations Code,
8 is amended by adding Section 2051.457 to read as follows:

9 Sec. 2051.457. FAILURE TO PAY ADMINISTRATIVE PENALTY. (a)
10 If an athlete agent fails to pay the administrative penalty and does
11 not request a hearing as provided by Section 2051.453, the
12 secretary of state may revoke the agent's certificate of
13 registration, refuse to renew the agent's certificate of
14 registration, or refuse to issue a certificate of registration to
15 the agent.

16 (b) If, after a hearing, an athlete agent fails to pay the
17 administrative penalty as required by Section 2051.454, the
18 secretary of state may revoke the agent's certificate of
19 registration, refuse to renew the agent's certificate of
20 registration, or refuse to issue a certificate of registration to
21 the agent.

22 SECTION 13. Section 2051.501, Occupations Code, is amended
23 by amending Subsection (b) and adding Subsection (c) to read as
24 follows:

25 (b) Except as provided by Subsection (c), an [An] offense
26 under this section is a Class A misdemeanor.

27 (c) An offense under this section committed by an athlete

1 agent who intentionally or knowingly violates Section
2 2051.351(a)(7) or (14) is a third degree felony.

3 SECTION 14. Subchapter K, Chapter 2051, Occupations Code,
4 is amended by adding Section 2051.502 to read as follows:

5 Sec. 2051.502. NOTICE OF CRIMINAL OFFENSE. The secretary
6 of state shall send notice of an athlete agent's conviction of an
7 offense under Section 2051.501 to each national professional sports
8 association that has certified the agent.

9 SECTION 15. The heading to Subchapter L, Chapter 2051,
10 Occupations Code, is amended to read as follows:

11 SUBCHAPTER L. CIVIL LIABILITY [~~SUIT BY INSTITUTION OF HIGHER~~
12 ~~EDUCATION~~]

13 SECTION 16. Section 2051.551, Occupations Code, is amended
14 by amending Subsections (a), (b), and (c) and adding Subsection
15 (a-1) to read as follows:

16 (a) An institution of higher education adversely affected
17 by an athlete agent's [~~or former athlete's~~] violation of this
18 chapter may file suit against the athlete agent [~~or former athlete~~]
19 for damages.

20 (a-1) An athlete adversely affected by an athlete agent's
21 violation of Section 2051.351(a)(7) or (14) may file suit against
22 the athlete agent for damages.

23 (b) A cause of action under Subsection (a) [~~this section~~]
24 does not accrue until the educational institution discovers or by
25 the exercise of reasonable diligence would have discovered the
26 violation by the athlete agent [~~or former athlete~~].

27 (c) Any liability of the athlete agent [~~or the former~~

1 ~~athlete]~~ under this section is several and not joint.

2 SECTION 17. Section 2051.552, Occupations Code, is amended
3 to read as follows:

4 Sec. 2051.552. ADVERSELY AFFECTED. (a) An institution of
5 higher education is adversely affected by an athlete agent's
6 violation of this chapter if:

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

11 (2) the disqualification or suspension of the
12 institution causes the institution to:

13 (A) lose revenue from media coverage of sports
14 contests;

15 (B) lose the right to grant athletic scholarships
16 in the sport in which the institution is disqualified or suspended;

17 (C) lose the right to recruit athletes; or

18 (D) otherwise suffer an adverse financial
19 impact.

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

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

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

1 SECTION 18. Section 2051.553, Occupations Code, is amended
2 to read as follows:

3 Sec. 2051.553. RECOVERY. A plaintiff [~~An institution of~~
4 ~~higher education~~] that prevails in a civil suit filed under Section
5 2051.551 may recover:

- 6 (1) actual damages;
- 7 (2) exemplary damages;
- 8 (3) court costs; and
- 9 (4) reasonable attorney's fees.

10 SECTION 19. The following sections of the Occupations Code
11 are repealed:

- 12 (1) Section 2051.103;
- 13 (2) Section 2051.104; and
- 14 (3) Section 2051.153.

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

19 (b) An individual who submits an application required by
20 Chapter 2051, Occupations Code, that is pending on the effective
21 date of this Act must resubmit an application as required by Chapter
22 2051, Occupations Code, as amended by this Act.

23 (c) The change in law made by this Act applies only to an
24 offense committed on or after the effective date of this Act. An
25 offense committed before the effective date of this Act is governed
26 by the law in effect on the date the offense was committed, and the
27 former law is continued in effect for that purpose. For purposes of

1 this section, an offense was committed before the effective date of
2 this Act if any element of the offense occurred before that date.

3 (d) Not later than January 1, 2012, the secretary of state
4 shall:

5 (1) by letter notify each institution of higher
6 education that would have received a copy of compliance
7 responsibilities by mail from the secretary under former Section
8 2051.052, Occupations Code, of the changes in law made by this Act;
9 and

10 (2) post on the secretary's Internet website the
11 compliance responsibilities of institutions of higher education
12 under Chapter 2051, Occupations Code, as required by Section
13 2051.052, Occupations Code, as amended by this Act.

14 SECTION 21. This Act takes effect September 1, 2011.