

By: Dutton

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 2051.101, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) A person may not register as an athlete agent under this chapter unless the person is certified as an agent by a national professional sports association, including the National Football League Players Association, National Basketball Players Association, Major League Baseball Players Association, National Hockey League Players' Association, or United States Soccer Federation.

SECTION 2. Section 2051.102(b), Occupations Code, is amended to read as follows:

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

(1) the applicant's:

(A) name;

(B) principal business address;

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

(D) formal training, practical experience, and educational background relating to the applicant's professional

1 activities as an athlete agent;

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

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

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

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

12 (C) a sanction or suspension related to
13 occupational or professional conduct;

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

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

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

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

27 (6) the name and address of each national professional

1 sports association that has certified the applicant as an agent.

2 SECTION 3. Section 2051.108(b), Occupations Code, is
3 amended to read as follows:

4 (b) A renewal application must include:

5 (1) the name and address of each athlete for whom the
6 athlete agent is performing professional services for compensation
7 on the date of the renewal application;

8 (2) the name and address of each athlete for whom the
9 athlete agent has performed professional services for compensation
10 during the three years immediately preceding the date of the
11 renewal application but for whom the athlete agent is not
12 performing professional services on the date of the renewal
13 application; ~~and~~

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

17 (4) any other information prescribed by the secretary
18 of state.

19 SECTION 4. Section 2051.151, Occupations Code, is amended
20 by amending Subsections (a) and (b) and adding Subsection (a-1) to
21 read as follows:

22 (a) An athlete agent shall, before contacting an athlete or
23 entering into an agent contract with an athlete in this state,
24 deposit with the secretary of state a surety bond, in the amount of
25 \$50,000, payable to the state and conditioned on:

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

27 (2) the payment of any administrative penalty assessed

1 under Subchapter J; and

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

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

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

10 (2) the payment of money owed to an individual or group
11 of individuals when the athlete agent or the athlete agent's
12 representative or agent receives the money; and

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

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

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

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

25 SECTION 5. Section 2051.351(a), Occupations Code, is
26 amended to read as follows:

27 (a) An athlete agent may not:

- 1 (1) publish or cause to be published:
- 2 (A) false, fraudulent, or misleading
- 3 information; or
- 4 (B) a false, fraudulent, or misleading:
- 5 (i) representation;
- 6 (ii) notice; or
- 7 (iii) advertisement;
- 8 (2) provide false information;
- 9 (3) make a false promise or representation relating to
- 10 employment;
- 11 (4) divide fees with or receive compensation from:
- 12 (A) a person exempt from registration under this
- 13 chapter under Section 2051.005; or
- 14 (B) a professional sports league or franchise,
- 15 including a representative or employee of the league or franchise;
- 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) offer a thing of value to induce the athlete to
- 21 enter into an agreement with the athlete agent in which the athlete
- 22 agent will represent the athlete;
- 23 (7) furnish a thing of value to an athlete before the
- 24 athlete completes the athlete's last intercollegiate sports
- 25 contest;
- 26 (8) [~~7~~] except as provided by this chapter, before
- 27 an athlete completes the athlete's last intercollegiate sports

1 contest:

2 (A) directly contact the athlete; or

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

5 (9) [~~(8)~~] furnish anything of value to any person
6 other than the athlete or another registered athlete agent to
7 induce an athlete to enter into an agreement with the athlete agent;

8 (10) [~~(9)~~] initiate any contact with an athlete,
9 except as authorized by this chapter;

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

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

13 (13) [~~(12)~~] fail to notify an athlete before the
14 athlete signs an agent contract that the signing may make the
15 athlete ineligible to participate in intercollegiate sports.

16 SECTION 6. Section 2051.451(b), Occupations Code, is
17 amended to read as follows:

18 (b) The secretary shall determine the amount of a penalty
19 assessed under Subsection (a), except that the amount may not
20 exceed:

21 (1) \$50,000 for a violation of Section 2051.351(a)(7);

22 or

23 (2) \$25,000 for any other violation.

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

26 Sec. 2051.457. FAILURE TO PAY ADMINISTRATIVE PENALTY. (a)

27 If an athlete agent fails to pay the administrative penalty and does

1 not request a hearing as provided by Section 2051.453, the
2 secretary of state may revoke the agent's certificate of
3 registration, refuse to renew the agent's certificate of
4 registration, or refuse to issue a certificate of registration to
5 the agent.

6 (b) If, after a hearing, an athlete agent fails to pay the
7 administrative penalty as required by Section 2051.454, the
8 secretary of state may revoke the agent's certificate of
9 registration, refuse to renew the agent's certificate of
10 registration, or refuse to issue a certificate of registration to
11 the agent.

12 SECTION 8. Section 2051.501, Occupations Code, is amended
13 by amending Subsection (b) and adding Subsection (c) to read as
14 follows:

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

17 (c) An offense under this section committed by an athlete
18 agent who intentionally or knowingly violates Section
19 2051.351(a)(7) is a third degree felony.

20 SECTION 9. Subchapter K, Chapter 2051, Occupations Code, is
21 amended by adding Section 2051.502 to read as follows:

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

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

1 SUBCHAPTER L. CIVIL LIABILITY [~~SUIT BY INSTITUTION OF HIGHER~~
2 ~~EDUCATION~~]

3 SECTION 11. Section 2051.551, Occupations Code, is amended
4 by amending Subsections (a), (b), and (c) and adding Subsection
5 (a-1) to read as follows:

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

10 (a-1) An athlete adversely affected by an athlete agent's
11 violation of Section 2051.351(a)(7) may file suit against the
12 athlete agent for damages.

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

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

19 SECTION 12. Section 2051.552, Occupations Code, is amended
20 to read as follows:

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

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

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

3 (A) lose revenue from media coverage of sports
4 contests;

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

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

8 (D) otherwise suffer an adverse financial
9 impact.

10 (b) An athlete is adversely affected by an athlete agent's
11 violation of Section 2051.351(a)(7) if:

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

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

18 SECTION 13. Section 2051.553, Occupations Code, is amended
19 to read as follows:

20 Sec. 2051.553. RECOVERY. A plaintiff [~~An institution of~~
21 ~~higher education~~] that prevails in a civil suit filed under Section
22 2051.551 may recover:

- 23 (1) actual damages;
24 (2) exemplary damages;
25 (3) court costs; and
26 (4) reasonable attorney's fees.

27 SECTION 14. Section 2051.153, Occupations Code, is

1 repealed.

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

6 (b) A person who submits an application required by Chapter
7 2051, Occupations Code, that is pending on the effective date of
8 this Act must resubmit an application as required by Chapter 2051,
9 Occupations Code, as amended by this Act.

10 (c) The change in law made by this Act applies only to an
11 offense committed on or after the effective date of this Act. An
12 offense committed before the effective date of this Act is governed
13 by the law in effect on the date the offense was committed, and the
14 former law is continued in effect for that purpose. For purposes of
15 this section, an offense was committed before the effective date of
16 this Act if any element of the offense occurred before that date.

17 SECTION 16. This Act takes effect September 1, 2011.