

1-1 By: Dutton (Senate Sponsor - West) H.B. No. 1123  
1-2 (In the Senate - Received from the House April 27, 2011;  
1-3 May 2, 2011, read first time and referred to Committee on Business  
1-4 and Commerce; May 11, 2011, reported favorably, as amended, by the  
1-5 following vote: Yeas 9, Nays 0; May 11, 2011, sent to printer.)

1-6 COMMITTEE AMENDMENT NO. 1 By: Lucio

1-7 Amend H.B. 1123 (House Engrossed) as follows:

1-8 (1) On page 2, lines 41-42, strike the following:

1-9 "an arrest for a crime that in this state is an offense other  
1-10 than a Class C misdemeanor;"

1-11 (2) On page 2, lines 46-53, reletter the paragraphs of  
1-12 Section 2051(b)(3), Occupations Code, accordingly.

1-13 (3) On page 3, line 55, strike "arrest for" and substitute  
1-14 "conviction of".

1-15 (4) On page 3, line 62, strike "the arrest" and substitute  
1-16 "conviction".

1-17 A BILL TO BE ENTITLED  
1-18 AN ACT

1-19 relating to the regulation of athlete agents; providing  
1-20 administrative and criminal penalties.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Section 2051.001, Occupations Code, is amended  
1-23 by amending Subdivision (3) and adding Subdivision (5-a) to read as  
1-24 follows:

1-25 (3) "Athlete agent" means an individual [~~a person~~]  
1-26 who:

1-27 (A) for compensation, directly or indirectly  
1-28 recruits or solicits an athlete to enter into an agent contract, a  
1-29 financial services contract, or a professional sports services  
1-30 contract with that individual [~~person~~] or another person; or

1-31 (B) for a fee, procures, offers, promises, or  
1-32 attempts to obtain employment for an athlete with a professional  
1-33 sports team.

1-34 (5-a) "National professional sports association"  
1-35 means an organization that licenses or certifies athlete agents to  
1-36 represent athletes in a particular professional sport. The term  
1-37 includes the National Football League Players Association,  
1-38 National Basketball Players Association, Major League Baseball  
1-39 Players Association, National Hockey League Players' Association,  
1-40 and United States Soccer Federation.

1-41 SECTION 2. Sections 2051.052(a) and (b), Occupations Code,  
1-42 are amended to read as follows:

1-43 (a) The secretary of state shall [~~, at least once a year,~~]  
1-44 publish on the secretary of state's Internet website information  
1-45 that prescribes the compliance responsibilities of an institution  
1-46 of higher education under this chapter.

1-47 (b) The secretary shall notify [~~mail, return receipt~~  
1-48 ~~requested, a copy of the compliance responsibilities published~~  
1-49 ~~under Subsection (a) to] the athletic director or other appropriate  
1-50 official of each institution of higher education of any change to  
1-51 the compliance responsibilities of the institution under this  
1-52 chapter.~~

1-53 SECTION 3. Section 2051.101, Occupations Code, is amended  
1-54 by amending Subsections (a) and (b) and adding Subsections (a-1),  
1-55 (a-2), (d), and (e) to read as follows:

1-56 (a) Except as provided by Subsection (b), an individual [~~a~~  
1-57 ~~person~~] may not act as an athlete agent in this state or represent  
1-58 that the individual [~~person~~] is an athlete agent in this state  
1-59 unless the individual [~~person~~] holds a certificate of registration  
1-60 under this chapter as:

1-61 (1) a professional athlete agent; or

1-62 (2) a limited athlete agent.

2-1 (a-1) An individual may not register as a professional  
 2-2 athlete agent under this chapter unless the individual is certified  
 2-3 as an agent by a national professional sports association.

2-4 (a-2) An individual who is not certified as an agent by a  
 2-5 national professional sports association may register only as a  
 2-6 limited athlete agent. A limited athlete agent may only represent  
 2-7 an athlete in a sport that does not have a national professional  
 2-8 sports association.

2-9 (b) Before the issuance of a certificate of registration  
 2-10 under this chapter, an individual [~~a person~~] may act as an athlete  
 2-11 agent in this state for all purposes except signing an agent  
 2-12 contract, if:

2-13 (1) an athlete or a person acting on behalf of the  
 2-14 athlete initiates communication with the individual [~~person~~]; and

2-15 (2) within seven days after the date of the initial act  
 2-16 as an athlete agent, the individual [~~person~~] submits an application  
 2-17 for registration under this chapter.

2-18 (d) An agent contract with an athlete in a sport for which  
 2-19 there is a national professional sports association is void if the  
 2-20 contract is negotiated by an athlete agent holding a limited  
 2-21 certificate of registration.

2-22 (e) A person who is not an individual may not register as an  
 2-23 athlete agent in this state.

2-24 SECTION 4. Sections 2051.102(b) and (e), Occupations Code,  
 2-25 are amended to read as follows:

2-26 (b) An applicant must provide information required by the  
 2-27 secretary of state, including:

2-28 (1) the applicant's:

2-29 (A) name;

2-30 (B) principal business address;

2-31 (C) business or occupation for the five years  
 2-32 immediately preceding the date of application; and

2-33 (D) formal training, practical experience, and  
 2-34 educational background relating to the applicant's professional  
 2-35 activities as an athlete agent;

2-36 (2) the name, sport, and last known team for each  
 2-37 person the applicant represented as an athlete agent during the  
 2-38 five years immediately preceding the date of application;

2-39 (3) whether the applicant or a person described by  
 2-40 Subdivision (5) has been subject to any of the following:

2-41 (A) an arrest for a crime that in this state is an  
 2-42 offense other than a Class C misdemeanor;

2-43 (B) a conviction of a crime that in this state is  
 2-44 a Class A or Class B misdemeanor, a felony, or a crime of moral  
 2-45 turpitude;

2-46 (C) [~~(B)~~] an administrative or a judicial  
 2-47 determination finding the applicant or other person made a false,  
 2-48 misleading, deceptive, or fraudulent representation;

2-49 (D) [~~(C)~~] a sanction or suspension related to  
 2-50 occupational or professional conduct;

2-51 (E) [~~(D)~~] a denial of an application for a  
 2-52 certificate of registration or license as an athlete agent; or

2-53 (F) [~~(E)~~] a denial, revocation, or suspension of  
 2-54 a certificate of registration or license as an athlete agent;

2-55 (4) whether the applicant or a person described by  
 2-56 Subdivision (5) has engaged in conduct resulting in the imposition  
 2-57 on an athlete or educational institution of a sanction, suspension,  
 2-58 or declaration of ineligibility to participate in an  
 2-59 interscholastic or intercollegiate athletic event; [~~and~~]

2-60 (5) except as provided by Subsection (d), the name and  
 2-61 address of each person, except a bona fide employee on salary, who  
 2-62 is financially interested as a partner, associate, or profit sharer  
 2-63 in the applicant's business; and

2-64 (6) the name and address of each national professional  
 2-65 sports association that has certified the applicant as an agent.

2-66 (e) An individual [~~A person~~] seeking certification as an  
 2-67 athlete agent under this chapter who holds a certificate of  
 2-68 registration or license as an athlete agent in another state may  
 2-69 submit a copy of the previous application and certificate or

3-1 license instead of submitting the application required by this  
3-2 section. The secretary of state shall accept the application and  
3-3 the certificate or license from the other state as an application  
3-4 for registration in this state if the application to the other  
3-5 state:

3-6 (1) was submitted to the other state not earlier than  
3-7 the 180th day before the date the application is submitted in this  
3-8 state and the applicant certifies that the information contained in  
3-9 the application is current;

3-10 (2) contains information substantially similar to or  
3-11 more comprehensive than the information required by this section;  
3-12 and

3-13 (3) was signed by the applicant under penalty of  
3-14 perjury.

3-15 SECTION 5. Sections 2051.108(b) and (e), Occupations Code,  
3-16 are amended to read as follows:

3-17 (b) A renewal application must include:

3-18 (1) the name, ~~and~~ address, and telephone number of  
3-19 each athlete for whom the athlete agent is performing professional  
3-20 services for compensation on the date of the renewal application;

3-21 (2) the name, ~~and~~ address, and telephone number of  
3-22 each athlete for whom the athlete agent has performed professional  
3-23 services for compensation during the three years immediately  
3-24 preceding the date of the renewal application but for whom the  
3-25 athlete agent is not performing professional services on the date  
3-26 of the renewal application; ~~and~~

3-27 (3) the name and address of each national professional  
3-28 sports association by which the athlete agent is currently  
3-29 certified; and

3-30 (4) any other information prescribed by the secretary  
3-31 of state.

3-32 (e) An individual [~~A person~~] who has submitted an  
3-33 application for renewal of registration or licensure as an athlete  
3-34 agent in another state may submit a copy of the application and  
3-35 certificate of registration or license from the other state instead  
3-36 of submitting the application required by this section. The  
3-37 secretary of state shall accept the application for renewal from  
3-38 the other state as an application for renewal under this section if  
3-39 the application to the other state:

3-40 (1) was submitted to the other state not earlier than  
3-41 the 180th day before the date the renewal application is submitted  
3-42 in this state and the applicant certifies that the information  
3-43 contained in the application is current;

3-44 (2) contains information substantially similar to or  
3-45 more comprehensive than the information required by this section;  
3-46 and

3-47 (3) was signed by the applicant under penalty of  
3-48 perjury.

3-49 SECTION 6. Subchapter C, Chapter 2051, Occupations Code, is  
3-50 amended by adding Sections 2051.109 and 2051.110 to read as  
3-51 follows:

3-52 Sec. 2051.109. CONTINUING NOTIFICATION REQUIREMENT. (a) A  
3-53 registered athlete agent shall notify the secretary of state in  
3-54 writing of the athlete agent's:

3-55 (1) arrest for a crime that in this state is an offense  
3-56 other than a Class C misdemeanor; or

3-57 (2) decertification as an agent by a national  
3-58 professional sports association that has become final by the  
3-59 conclusion of the appeal process provided by the association.

3-60 (b) The athlete agent shall notify the secretary of state as  
3-61 required under this section not later than 30 days after the date of  
3-62 the arrest or the date that the decertification becomes final.

3-63 Sec. 2051.110. EFFECT OF DECERTIFICATION BY PROFESSIONAL  
3-64 ASSOCIATION. The secretary of state shall revoke the certificate  
3-65 of registration of an athlete agent decertified by a national  
3-66 professional sports association.

3-67 SECTION 7. Section 2051.151, Occupations Code, is amended  
3-68 by amending Subsections (a) and (b) and adding Subsection (a-1) to  
3-69 read as follows:

4-1 (a) An athlete agent shall, before contacting an athlete or  
4-2 entering into an agent contract with an athlete in this state,  
4-3 deposit with the secretary of state a surety bond, in the amount of  
4-4 \$50,000, payable to the state and conditioned on:

- 4-5 (1) the athlete agent complying with this chapter;
- 4-6 (2) the payment of any administrative penalty assessed  
4-7 under Subchapter J; and
- 4-8 (3) the payment of any damages awarded to an  
4-9 institution of higher education or an athlete as a result of the  
4-10 athlete agent offering or providing a thing of value to an athlete  
4-11 or a family member of the athlete.

4-12 (a-1) An athlete agent shall, before entering into a  
4-13 financial services contract with an athlete, deposit with the  
4-14 secretary of state a surety bond, in the amount of \$100,000, payable  
4-15 to the state and conditioned on:

- 4-16 (1) the athlete agent complying with this chapter;
- 4-17 (2) the payment of money owed to an individual or group  
4-18 of individuals when the athlete agent or the athlete agent's  
4-19 representative or agent receives the money; and
- 4-20 (3) the payment of damages to an athlete caused by the  
4-21 intentional misrepresentation, fraud, deceit, or unlawful or  
4-22 negligent act or omission of the athlete agent or of the athlete  
4-23 agent's representative or employee while acting within the scope of  
4-24 the financial services contract.

4-25 (b) An athlete agent shall maintain a bond deposited under  
4-26 Subsection (a) or (a-1) for not less than two years after the later  
4-27 of:

- 4-28 (1) the date that the athlete agent ceases to provide  
4-29 financial services to an athlete; or
- 4-30 (2) the date that the athlete agent's certificate of  
4-31 registration expires or is revoked.

4-32 SECTION 8. Section 2051.201, Occupations Code, is amended  
4-33 to read as follows:

4-34 Sec. 2051.201. CONTRACT FORM. (a) A registered athlete  
4-35 agent must use a form approved by the secretary of state for any  
4-36 agent contract or financial services contract.

4-37 (b) The secretary of state shall by rule require that, to  
4-38 the extent practicable, the form for an agent contract or financial  
4-39 services contract conforms to the contract form approved by the  
4-40 national professional sports association for the sport in which the  
4-41 athlete will be represented.

4-42 SECTION 9. Section 2051.205(a), Occupations Code, is  
4-43 amended to read as follows:

4-44 (a) A registered athlete agent shall, not later than the  
4-45 10th [~~5th~~] day after the date an athlete signs an agent contract  
4-46 or financial services contract, file a copy of the contract with:

- 4-47 (1) the secretary of state; and
- 4-48 (2) if the athlete is a student at an institution of  
4-49 higher education, the athletic director of the athlete's  
4-50 institution.

4-51 SECTION 10. Section 2051.351(a), Occupations Code, is  
4-52 amended to read as follows:

4-53 (a) An athlete agent may not:

- 4-54 (1) publish or cause to be published:
  - 4-55 (A) false, fraudulent, or misleading  
4-56 information; or
  - 4-57 (B) a false, fraudulent, or misleading:
    - 4-58 (i) representation;
    - 4-59 (ii) notice; or
    - 4-60 (iii) advertisement;
- 4-61 (2) provide false information;
- 4-62 (3) make a false promise or representation relating to  
4-63 employment;
- 4-64 (4) divide fees with or receive compensation from:
  - 4-65 (A) a person exempt from registration under this  
4-66 chapter under Section 2051.005; [~~or~~]
  - 4-67 (B) a professional sports league or franchise,  
4-68 including a representative or employee of the league or franchise;  
4-69 or

5-1 (C) an institution of higher education,  
 5-2 including a representative or employee of the institution's  
 5-3 athletics department;  
 5-4 (5) enter into a written or oral agreement with an  
 5-5 employee of an institution of higher education in which the athlete  
 5-6 agent offers a thing of value to the employee for the referral of  
 5-7 clients by the employee;  
 5-8 (6) before an athlete completes the athlete's last  
 5-9 intercollegiate sports contest, offer a thing of value to the  
 5-10 athlete or an individual related to the athlete within the second  
 5-11 degree by affinity or consanguinity to induce the athlete to enter  
 5-12 into an agreement with the athlete agent in which the athlete agent  
 5-13 will represent the athlete;  
 5-14 (7) before an athlete completes the athlete's last  
 5-15 intercollegiate sports contest, furnish a thing of value to the  
 5-16 athlete or an individual related to the athlete within the second  
 5-17 degree by affinity or consanguinity;  
 5-18 (8) [~~7~~] except as provided by this chapter, before  
 5-19 an athlete completes the athlete's last intercollegiate sports  
 5-20 contest:  
 5-21 (A) directly contact the athlete; or  
 5-22 (B) enter into an oral or written agreement with  
 5-23 the athlete for the athlete agent to represent the athlete;  
 5-24 (9) [~~8~~] furnish anything of value to any person  
 5-25 other than the athlete or another registered athlete agent to  
 5-26 induce an athlete to enter into an agreement with the athlete agent;  
 5-27 (10) [~~9~~] initiate any contact with an athlete,  
 5-28 except as authorized by this chapter;  
 5-29 (11) [~~10~~] fail to retain or permit inspection of the  
 5-30 records required to be retained by Section 2051.352;  
 5-31 (12) [~~11~~] predate or postdate an agent contract;  
 5-32 [~~or~~]  
 5-33 (13) [~~12~~] fail to notify an athlete before the  
 5-34 athlete signs an agent contract that the signing may make the  
 5-35 athlete ineligible to participate in intercollegiate sports; or  
 5-36 (14) commit an act or cause a person to commit an act  
 5-37 on the athlete agent's behalf that causes an athlete to violate a  
 5-38 rule of the national association for the promotion and regulation  
 5-39 of intercollegiate athletics of which the athlete's institution of  
 5-40 higher education is a member.  
 5-41 SECTION 11. Section 2051.451(b), Occupations Code, is  
 5-42 amended to read as follows:  
 5-43 (b) The secretary shall determine the amount of a penalty  
 5-44 assessed under Subsection (a), except that the amount may not  
 5-45 exceed:  
 5-46 (1) \$50,000 for a violation of Section 2051.351(a)(7)  
 5-47 or (14); or  
 5-48 (2) \$25,000 for any other violation.  
 5-49 SECTION 12. Subchapter J, Chapter 2051, Occupations Code,  
 5-50 is amended by adding Section 2051.457 to read as follows:  
 5-51 Sec. 2051.457. FAILURE TO PAY ADMINISTRATIVE PENALTY. (a)  
 5-52 If an athlete agent fails to pay the administrative penalty and does  
 5-53 not request a hearing as provided by Section 2051.453, the  
 5-54 secretary of state may revoke the agent's certificate of  
 5-55 registration, refuse to renew the agent's certificate of  
 5-56 registration, or refuse to issue a certificate of registration to  
 5-57 the agent.  
 5-58 (b) If, after a hearing, an athlete agent fails to pay the  
 5-59 administrative penalty as required by Section 2051.454, the  
 5-60 secretary of state may revoke the agent's certificate of  
 5-61 registration, refuse to renew the agent's certificate of  
 5-62 registration, or refuse to issue a certificate of registration to  
 5-63 the agent.  
 5-64 SECTION 13. Section 2051.501, Occupations Code, is amended  
 5-65 by amending Subsection (b) and adding Subsection (c) to read as  
 5-66 follows:  
 5-67 (b) Except as provided by Subsection (c), an [An] offense  
 5-68 under this section is a Class A misdemeanor.  
 5-69 (c) An offense under this section committed by an athlete

6-1 agent who intentionally or knowingly violates Section  
 6-2 2051.351(a)(7) or (14) is a third degree felony.

6-3 SECTION 14. Subchapter K, Chapter 2051, Occupations Code,  
 6-4 is amended by adding Section 2051.502 to read as follows:

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

6-9 SECTION 15. The heading to Subchapter L, Chapter 2051,  
 6-10 Occupations Code, is amended to read as follows:

6-11 SUBCHAPTER L. CIVIL LIABILITY [~~SUIT BY INSTITUTION OF HIGHER~~  
 6-12 ~~EDUCATION~~]

6-13 SECTION 16. Section 2051.551, Occupations Code, is amended  
 6-14 by amending Subsections (a), (b), and (c) and adding Subsection  
 6-15 (a-1) to read as follows:

6-16 (a) An institution of higher education adversely affected  
 6-17 by an athlete agent's [~~or former athlete's~~] violation of this  
 6-18 chapter may file suit against the athlete agent [~~or former athlete~~]  
 6-19 for damages.

6-20 (a-1) An athlete adversely affected by an athlete agent's  
 6-21 violation of Section 2051.351(a)(7) or (14) may file suit against  
 6-22 the athlete agent for damages.

6-23 (b) A cause of action under Subsection (a) [~~this section~~]  
 6-24 does not accrue until the educational institution discovers or by  
 6-25 the exercise of reasonable diligence would have discovered the  
 6-26 violation by the athlete agent [~~or former athlete~~].

6-27 (c) Any liability of the athlete agent [~~or the former~~  
 6-28 ~~athlete~~] under this section is several and not joint.

6-29 SECTION 17. Section 2051.552, Occupations Code, is amended  
 6-30 to read as follows:

6-31 Sec. 2051.552. ADVERSELY AFFECTED. (a) An institution of  
 6-32 higher education is adversely affected by an athlete agent's  
 6-33 violation of this chapter if:

6-34 (1) the athlete agent's violation causes a national  
 6-35 association for the promotion and regulation of intercollegiate  
 6-36 athletics to disqualify or suspend the institution from  
 6-37 participating in intercollegiate sports contests; and

6-38 (2) the disqualification or suspension of the  
 6-39 institution causes the institution to:

6-40 (A) lose revenue from media coverage of sports  
 6-41 contests;

6-42 (B) lose the right to grant athletic scholarships  
 6-43 in the sport in which the institution is disqualified or suspended;

6-44 (C) lose the right to recruit athletes; or

6-45 (D) otherwise suffer an adverse financial  
 6-46 impact.

6-47 (b) An athlete is adversely affected by an athlete agent's  
 6-48 violation of Section 2051.351(a)(7) or (14) if:

6-49 (1) the athlete agent's violation causes a national  
 6-50 association for the promotion and regulation of intercollegiate  
 6-51 athletics to disqualify or suspend the athlete from participating  
 6-52 in intercollegiate sports contests; and

6-53 (2) the disqualification or suspension of the athlete  
 6-54 causes the athlete to suffer an adverse financial impact.

6-55 SECTION 18. Section 2051.553, Occupations Code, is amended  
 6-56 to read as follows:

6-57 Sec. 2051.553. RECOVERY. A plaintiff [~~An institution of~~  
 6-58 ~~higher education~~] that prevails in a civil suit filed under Section  
 6-59 2051.551 may recover:

- 6-60 (1) actual damages;
- 6-61 (2) exemplary damages;
- 6-62 (3) court costs; and
- 6-63 (4) reasonable attorney's fees.

6-64 SECTION 19. The following sections of the Occupations Code  
 6-65 are repealed:

- 6-66 (1) Section 2051.103;
- 6-67 (2) Section 2051.104; and
- 6-68 (3) Section 2051.153.

6-69 SECTION 20. (a) A registration under Chapter 2051,

7-1 Occupations Code, in effect on the effective date of this Act  
7-2 continues in effect under the former law until it expires or is  
7-3 revoked, and the former law is continued in effect for that purpose.

7-4 (b) An individual who submits an application required by  
7-5 Chapter 2051, Occupations Code, that is pending on the effective  
7-6 date of this Act must resubmit an application as required by Chapter  
7-7 2051, Occupations Code, as amended by this Act.

7-8 (c) The change in law made by this Act applies only to an  
7-9 offense committed on or after the effective date of this Act. An  
7-10 offense committed before the effective date of this Act is governed  
7-11 by the law in effect on the date the offense was committed, and the  
7-12 former law is continued in effect for that purpose. For purposes of  
7-13 this section, an offense was committed before the effective date of  
7-14 this Act if any element of the offense occurred before that date.

7-15 (d) Not later than January 1, 2012, the secretary of state  
7-16 shall:

7-17 (1) by letter notify each institution of higher  
7-18 education that would have received a copy of compliance  
7-19 responsibilities by mail from the secretary under former Section  
7-20 2051.052, Occupations Code, of the changes in law made by this Act;  
7-21 and

7-22 (2) post on the secretary's Internet website the  
7-23 compliance responsibilities of institutions of higher education  
7-24 under Chapter 2051, Occupations Code, as required by Section  
7-25 2051.052, Occupations Code, as amended by this Act.

7-26 SECTION 21. This Act takes effect September 1, 2011.

7-27

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