

ATHLETE AGENT REGISTRATION

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House Bills 4838 and 4839 as introduced
Sponsor: Rep. Rob VerHeulen
Committee: Regulatory Reform
Complete to 5-11-16

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

Taken together, House Bills 4838 and 4839 would create a registry for athlete agents and set fees for registration.

HB 4838 amends the Occupational Code by creating a new Article 8a which contains the process for registering as an athlete agent while HB 4839 would amend Section 12 of the State License Fee Act by setting the fees relating to the initial application for registration as well as the annual renewal fee. Each bill would take effect 90 days after the date it is enacted into law. The bills are tie-barred together, meaning neither can take effect unless the other is enacted into law. A more detailed summary follows.

House Bill 4838

The bill would add the following definitions:

Athlete agent means "an individual who enters into an agency contract with a student-athlete or, directly or indirectly, recruits or solicits a student-athlete to enter into an agency contract." This includes an individual who represents to the public that the individual is an athlete agent, though it does not include a spouse, parent, sibling, grandparent, or guardian of the student-athlete or an individual acting solely on behalf of a professional sports team or professional sports organization.

Agency contract means "an agreement in which a student- athlete authorizes a person to negotiate or solicit on behalf of the student-athlete a professional sports services contract or an endorsement contract."

Athletic director means "an individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or the athletic program for females, as appropriate."

Contact means "a communication, direct or indirect, between an athlete agent and a student-athlete, to recruit or solicit the student-athlete to enter into an agency contract."

Endorsement contract means "an agreement under which a student-athlete is employed or receives consideration to use on behalf of the other party any value that the student-athlete may have because of publicity, reputation, following, or fame obtained because of athletic ability or performance.

Intercollegiate sport means "a sport played at the collegiate level for which eligibility requirements for participation by a student-athlete are established by a national association for the promotion or regulation of collegiate athletics."

Professional sports services contract means an "agreement under which an individual is employed, or agrees to render services, as a player on a professional sports team, with a professional sports organization, or as a professional athlete."

Student-athlete means "an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in any intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student-athlete for purposes of that sport."

Registration requirement

Before being issued a certificate of registration, an individual may act as an athlete agent in this state for all purposes except signing an agency contract, if both of the following are met:

- A student-athlete or another person acting on behalf of the student-athlete initiates communication with the individual.
- Within 7 days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in this state.

Otherwise, an individual would be prohibited from acting as an athlete agent without a certificate of registration, and an agency contract resulting from conduct not in accordance with this requirement would be void, and the athlete agent would have to return any consideration received under the contract.

Requirements for registration or renewal

An applicant for registration must submit an application for registration to the Department of Licensing and Regulatory Affairs (LARA) and pay an application processing fee and the per-year registration fee for the upcoming licensure period. Such a filed application would be considered a public record and available to the public under the Freedom of Information Act (FOIA). The application must be in the name of an individual and signed or otherwise authenticated by the applicant under penalty of perjury and state or contain all of the following:

- The name of the applicant and the address of the applicant's principal place of business.
- The name of the applicant's business or employer, if applicable.
- Any business or occupation engaged in by the applicant for the 5-year period preceding the date of submission of the application.
- A description of all of the following about the applicant:
 - Formal training as an athlete agent.
 - Practical experience as an athlete agent.
 - Educational background relating to the applicant's activities as an athlete agent.

- The names and addresses of 3 individuals not related to the applicant who are willing to serve as references.
- The name, sport, and last known team for each individual for whom the applicant acted as an athlete agent during the 5 years immediately preceding the date of submission of the application.
- The names and addresses of all of the following:
 - If the athlete agent's business is not a corporation, the partners, members, officers, managers, associates, or profit-sharers of the business.
 - If a corporation employs the athlete agent, the officers, directors, and any shareholder of the corporation that has an interest of 5% or more.
- Whether the applicant or the partners, members, officers, managers, associates, or profit-sharers of the business, or the officers, directors, and any shareholder of the corporation that has an interest of 5% or more, has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony, and if so, identification of the crime.
- Whether there has been any administrative or judicial determination that the applicant or the partners, members, officers, managers, associates, or profit-sharers of the business, or the officers, directors, and any shareholder of the corporation that has an interest of 5% or more has made a false, misleading, deceptive, or fraudulent representation.
- Any instance in which the conduct of the applicant or the partners, members, officers, managers, associates, or profit-sharers of the business, or the officers, directors, and any shareholder of the corporation that has an interest of 5% or more resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or educational institution.
- Any sanction, suspension, or disciplinary action taken against the applicant or the partners, members, officers, managers, associates, or profit-sharers of the business, or the officers, directors, and any shareholder of the corporation that has an interest of 5% or more arising out of occupational or professional conduct.
- Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew the registration or licensure of the applicant or the partners, members, officers, managers, associates, or profit-sharers of the business, or the officers, directors, and any shareholder of the corporation that has an interest of 5% or more as an athlete agent in any state.

Registrations/Licensure in another state

An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another state may submit a copy of the application and certificate in lieu of an application. LARA would be required to accept the application and the certificate from the other state, accompanied by an application processing fee and the per-year registration fee for the upcoming licensure period, as an application for registration in this state if it meets all of the following:

- Was submitted in the other state within the 6-month period preceding the submission of the application in this state and the applicant certifies that the information contained in the application is current.
- Contains information substantially similar to or more comprehensive than that required in an application submitted in this state.
- Was signed by the applicant under penalty of perjury.

Renewable after two years

A certificate of registration or a renewal of a registration is valid for 2 years. For renewal of registration, an individual would submit a form to LARA and the necessary fee. The renewal form would need to be filled out with current information that answers the above queries listed on the original application form. An individual submitting an application for out of state renewal may still submit that in lieu of LARA's form in the same way as he or she submitted the out of state registration or license for initial registration in Michigan.

Granting of registration

LARA must issue a certificate of registration to an individual whose application complies with the requirements listed above. However, LARA may refuse to issue a certificate of registration if the department determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, LARA may consider whether the applicant has done any of the following:

- Been convicted of a crime that, if committed in Michigan, would be a crime involving moral turpitude or a felony.
- Made a materially false, misleading, deceptive, or fraudulent representation in the application or as an athlete agent.
- Engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity.
- Engaged in prohibited conduct.
- Had a registration or license as an athlete agent suspended, revoked, or denied or has been refused renewal of a registration or license as an athlete agent in any state.
- Engaged in conduct the consequence of which was that a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event was imposed on a student-athlete or educational institution.
- Engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty, or integrity.

In making a determination that an applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent, the department must consider all of the following:

- How recently the conduct occurred.
- The nature of the conduct and the context in which it occurred.
- Any other relevant conduct of the applicant.

By acting as an athlete agent in this state, a nonresident individual appoints LARA as the individual's agent for service of process in any civil action in this state related to the individual's acting as an athlete agent in this state.

Agency contract requirements

An agency contract must be in a record, signed or otherwise authenticated by the parties and must state or contain all of the following:

- The amount and method of calculating the consideration to be paid by the student-athlete for services to be provided by the athlete agent under the contract and any other consideration the athlete agent has received or will receive from any other source for entering into the contract or for providing the services.
- The name of any person not listed in the application for registration or renewal of registration who will be compensated because the student-athlete signed the agency contract.
- A description of any expenses that the student-athlete agrees to reimburse.
- A description of the services to be provided to the student-athlete.
- The duration of the contract.
- The date of execution of the contract.

An agency contract also must contain, in close proximity to the signature of the student-athlete, a conspicuous notice in boldfaced type in capital letters stating the following:

"WARNING TO STUDENT-ATHLETE IF YOU SIGN THIS CONTRACT:

- (1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT-ATHLETE IN YOUR SPORT;**
- (2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND**
- (3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY."**

The athlete agent must give a record of the signed or otherwise authenticated agency contract to the student-athlete at the time of execution. An agency contract that does not conform to this requirement is voidable by the student-athlete. If a student-athlete voids an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

Athletic director notification

Within 72 hours after entering into an agency contract or before the next scheduled athletic event in which the student-athlete may participate, whichever occurs first, the athlete agent must give notice in a record of the existence of the contract to the athletic director of the educational institution at which the student-athlete is enrolled or the athlete agent has reasonable grounds to believe the student-athlete intends to enroll, and the student athlete must also inform the athletic director that he or she has entered into an agency contract.

Cancellation of a contract

A student-athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within 14 days after the contract is signed. If a student-athlete cancels an agency contract, the student-athlete would not be required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract. A student-athlete may not waive the right to cancel an agency contract.

Record keeping

An athlete agent must keep all of the following records for at least 5 years and make those records available for inspection by LARA during normal business hours:

- The name and address of each individual represented by the athlete agent.
- Any agency contract entered into by the athlete agent.
- Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract.

Prohibited conduct by athlete agent

An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, would be prohibited from doing any of the following:

- Giving any materially false or misleading information or making a materially false promise or representation.
- Furnishing anything of value to a student-athlete before the student-athlete enters into the agency contract.
- Furnishing anything of value to any individual other than the student-athlete or another registered athlete agent.

An athlete agent would also be prohibited from intentionally doing any of the following:

- Initiating contact with a student-athlete unless registered.
- Refusing or failing to retain or permit inspection of the records the athlete agent is required to maintain.
- Failing to register, if required to register.
- Providing materially false or misleading information in an application for registration or renewal of registration.
- Predating or postdating an agency contract.
- Failing to notify a student-athlete before the student-athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate as a student-athlete in that sport.

An athlete agent who violates these provisions is guilty of a misdemeanor punishable by a fine of not more than \$1,000. [NOTE: Enacting Section 1 of the bill repeals MCL 750.411e, which prohibits an athlete agent from inducing a student athlete to enter into an agent contract or professional sport services contract before the student athlete's eligibility for collegiate athletics expires and from entering into an agreement where that athlete agent gives, offers, or promises anything of value to an employee of an institution of higher education in return for the referral of a student athlete by that employee. The penalty for a

violation of this prohibition is a fine of not more than \$50,000 or an amount equal to 3 times the amount given, offered, or promised as an inducement, or 3 times the value of the agreement entered into, and/or not more than 1 year imprisonment.]

Educational institutions

An educational institution has a right of action against an athlete agent or a former student-athlete for damages caused by a violation of Article 8a. In such an action, the court may award to the prevailing party costs and reasonable attorney fees.

Damages of an educational institution include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student-athlete, the educational institution was injured by a violation of this article or was penalized, disqualified, or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by reasonable self-imposed disciplinary action taken to mitigate sanctions likely to be imposed by such an organization.

A right of action does not accrue until the educational institution discovers or by the exercise of reasonable diligence would have discovered the violation by the athlete agent or former student-athlete. Any liability of the athlete agent or the former student-athlete would be several and not joint. The bill also specifically states that the new Article 8a would not restrict rights, remedies, or defenses of any person under law or equity.

Board of Athlete Agents

The bill would create a board of athlete agents. The term of a member of the Athlete Agent Board would begin on July 1.

House Bill 4839

The bill would set the following fee amounts:

- For an initial registration application fee, \$250, unless the applicant's registration application is based on a certificate of registration or licensure issued by another state, in which case the amount is \$100.
- For a registration renewal fee, \$100, unless the applicant's renewal is based on a certificate of renewal or licensure submitted in another state, in which case the amount is \$50.

FISCAL IMPACT:

House Bills 4838 and 4839 would have an indeterminate fiscal impact on the Department of Licensing and Regulatory Affairs (LARA) to the extent that LARA incurs expenses in implementing, administering, and enforcing the registration requirements of the bills and dependent upon whether the application and registration fees are sufficient to adequately offset those expenses. Currently, LARA is uncertain of the annual amount of the former and the ultimate outcome of the latter.

The bill would repeal Section 411e of the Michigan Penal Code (1931 PA 328, MCL 750.411e), which established the fine of \$50,000 or an amount equal to 3 times the amount given, offered, or promised by the agent. House Bill 4838 establishes the new fine of not more than \$1,000. Depending on the number of people that are actually charged under the provisions of the bill, the bill could result in a decrease in penal fine revenue which would decrease funding for local libraries, which are the constitutionally-designated recipients of those revenues. The bill would have an indeterminate fiscal impact on the judiciary and local court funding units. The fiscal impact would depend on how the provisions of the bill affected caseloads and related administrative costs.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.