

CHAPTER 487

S.B. No. 87

AN ACT

relating to the regulation of certain athlete agents; providing penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subdivision (5), Subsection (a), Section 1, Chapter 13, Acts of the 70th Legislature, 2nd Called Session, 1987 (Article 8871, Vernon's Texas Civil Statutes), is amended to read as follows:

(5) "Athlete" means an individual who [~~resides in this state and who~~]:

(A) is eligible to participate in intercollegiate sports contests as a member of a *football or basketball* sports team of an institution of higher education located in this state that is a member of a national association for the promotion and regulation of intercollegiate athletics; or

(B) has participated as a member of such a sports team at an institution of higher education and who has never signed a contract of employment with a professional sports team.

SECTION 2. Section 1, Chapter 13, Acts of the 70th Legislature, 2nd Called Session, 1987 (Article 8871, Vernon's Texas Civil Statutes), is amended by adding Subsections (c) and (d) to read as follows:

(c) For purposes of this Act, an athlete's eligibility to participate in intercollegiate sports contests ends at the end of the last sports contest in the athlete's sport of football or basketball that is sanctioned by the athlete's final year of eligibility, as determined by the governing body of the national association for the promotion and regulation of intercollegiate athletics of which the athlete's institution of higher education is a member.

(d) A person who declares himself eligible for recruitment by a professional sports team, thereby becoming ineligible to participate in intercollegiate sports contests, is not an athlete under this Act and may be contacted by an athlete agent without compliance by the agent with the requirements of this Act. If the person later becomes eligible to participate in

intercollegiate sports, the person is again considered an athlete under this Act, and any contact with the person by an athlete agent is subject to the requirements of this Act.

SECTION 3. Section 2, Chapter 13, Acts of the 70th Legislature, 2nd Called Session, 1987 (Article 8871, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and adding Subsections (k), (l), and (m) to read as follows:

(a) An athlete agent must register with the secretary of state before the athlete agent may contact an athlete, either directly or indirectly, while the athlete is *eligible* [~~located in this state~~]. A registered athlete agent may make those contacts only in accordance with this Act.

(k) *An applicant for registration that is a corporation, an association, a partnership, or another entity, and not an individual or a sole proprietorship, shall file with the secretary of state, accompanying the application for registration or the renewal of any registration, a statement setting forth the names and addresses of all individuals who will recruit or solicit an athlete to enter into an agent contract, a professional sports services contract, or a financial services contract with the agent.*

(l) *If a registered athlete agent changes the individuals who recruit or solicit athletes on behalf of the agent, the agent shall, not later than the 30th day after the date the change is made, file with the secretary of state a statement setting forth the changes to the statement filed under Subsection (k) of this section required to comply with that subsection.*

(m) *The secretary of state may prescribe a form for the statements required under Subsections (k) and (l) of this section.*

SECTION 4. Chapter 13, Acts of the 70th Legislature, 2nd Called Session, 1987 (Article 8871, Vernon's Texas Civil Statutes), is amended by adding Section 2A to read as follows:

Sec. 2A. **EXEMPTION.** *This Act does not apply to a person who, for compensation, directly or indirectly recruits or solicits an athlete to enter into a contract under which the person provides financial services to the athlete if:*

- (1) *the person is licensed by this state as a dealer, an agent, or a salesman of securities, a real estate broker or salesman, an insurance agent, or another professional;*
- (2) *the services are of a type that are customarily provided by persons in those licensed professions; and*
- (3) *the person does not:*

(A) recruit or solicit the athlete to enter into an agent contract or a professional services contract on behalf of the person, an affiliate, a related entity, or a third party; or

(B) procure, offer, promise, or attempt to obtain employment for an athlete with a professional sports team.

SECTION 5. Section 3, Chapter 13, Acts of the 70th Legislature, 2nd Called Session, 1987 (Article 8871, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. **POWERS AND DUTIES OF SECRETARY OF STATE; DISCIPLINARY ACTIONS.** (a) *The secretary of state shall actively enforce this Act and conduct investigations as necessary to ensure compliance.*

(b) *If the secretary of state determines that a violation has occurred, the secretary of state shall refer the case to the attorney general for prosecution and take disciplinary action under Subsection (e) of this section. On the determination of the secretary of state that a violation is occurring or is threatened, the secretary of state or attorney general may bring an action in district court in Travis County to enjoin the violation or threatened violation.*

(c) *On receipt of a written request by a registered athlete agent, the secretary of state shall provide to the agent the names of the compliance coordinators designated under Subsection (e) of Section 7 of this Act and on request also shall provide a copy of the standards adopted by an institution of higher education under Subsection (f) of Section 7 of this Act.*

(d) *The secretary of state shall publish, annually or more frequently, information that prescribes an institution of higher education's compliance responsibilities under this Act and shall mail copies of the information to the athletic director or other appropriate official at each institution of higher education, return receipt requested. The secretary of state shall update the material as necessary.*

(e) The secretary of state shall deny a certificate of registration to an applicant who has been convicted of a felony or of a misdemeanor involving moral turpitude and may deny, suspend, or revoke a certificate of registration issued under this Act for a violation of this Act or a rule adopted under this Act or [may] take other disciplinary actions. *Judicial review of a denial, suspension, or revocation of a certificate of registration or a [A] disciplinary action under this Act is by trial de novo and is subject to Subsection (c) of Section 19, [the] Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).*

SECTION 6. Subsection (b), Section 6, Chapter 13, Acts of the 70th Legislature, 2nd Called Session, 1987 (Article 8871, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) An ~~[A-registered]~~ athlete agent may not:

(1) publish or cause to be published any false, fraudulent, or misleading information, representation, notice, or advertisement or give any false information or make any false promises or representations concerning any employment to any person;

(2) divide fees with or receive compensation from a *person exempt under Section 2A of this Act* or a professional sports league or franchise or its representative or employee;

(3) enter into any agreement, written or oral, by which the athlete agent offers anything of value to any employee of an institution of higher education located in this state in return for the referral of any clients by that employee;

(4) offer anything of value ~~excluding reasonable entertainment expenses and transportation expenses to and from the athlete agent's registered principal place of business,~~ to induce an athlete to enter into an agreement by which the athlete agent will represent the athlete; or

(5) except as *otherwise* provided by ~~[Section 7 of]~~ this Act, directly contact an athlete who is participating in *football or basketball* to ~~a team sport at an institution of higher education located in this state to discuss the athlete agent's representation of the athlete in the marketing of the athlete's athletic ability or reputation or the provision of financial services by the athlete agent, or~~ enter into any agreement, written or oral, by which the athlete agent will represent the athlete, until after completion of the athlete's last intercollegiate contest ~~including postseason games,~~ and may not enter into an agreement before the athlete's last intercollegiate contest that purports to take effect at a time after that contest is completed.

SECTION 7. Section 7, Chapter 13, Acts of the 70th Legislature, 2nd Called Session, 1987 (Article 8871, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7. PERMITTED CONTACTS WITH CERTAIN ATHLETES; COMPLIANCE COORDINATOR; STANDARDS. (a) *Each institution [All institutions]* of higher education located in this state shall sponsor athlete agent interviews on *its campus at which [their campuses before the athlete's final year of eligibility to participate in intercollegiate athletics, and]* a registered athlete agent may interview an ~~[the]~~ athlete to discuss the athlete agent's provision of financial services and advice to the athlete or the athlete agent's representation of the athlete in the marketing of the athlete's athletic ability or reputation. *An interview is subject to the requirements of this section.*

(b) *The secretary of state [All institutions sponsoring athlete agent interviews]* shall notify each registered athlete agent in writing that a copy of the standards adopted by an institution of higher education relating to the conduct of an athlete agent interview at the institution is available from the secretary of state as provided by Subsection (c) of Section 3 of this Act. *The notice must include a brief statement that the standards adopted by an institution of higher education specify the policies of that institution relating to [give public notice of those interviews not later than the 30th day before the date on which the period in which the interviews may be conducted begins. Institutions shall provide written notice of]* the time, place, and duration of ~~[the]~~ athlete agent interviews at the campuses of that institution and that each institution has a designated compliance coordinator who may be contacted by the agent for further information ~~[interview program to those registered athlete agents who have previously furnished the athletic director of such institutions with their addresses].~~

(c) The athlete agent shall strictly adhere to the specific rules of each separate [electing] institution with regard to the time, place, and duration of the athlete agent interviews. The interviews must be conducted [~~in the final year of eligibility~~] during a period of at least five but not more than [~~not to exceed~~] 30 consecutive business days and, as designated by the institution, must be conducted during the off-season training period for the athlete's sport that precedes the athlete's final year of eligibility.

(d) The signing of an athlete agent contract by an athlete may occur at any time permitted by the rules or regulations of the national association for the promotion and regulation of intercollegiate athletics of which the athlete's institution of higher education is a member.

(e) Each institution of higher education in this state shall designate an individual to serve as compliance coordinator for the institution. The institution shall report the name of its compliance coordinator to the secretary of state in the manner prescribed by the secretary of state. The compliance coordinator shall organize the athlete interview schedule for the coordinator's campuses and shall ensure the compliance of the institution and its athletes with this Act and the rules adopted under this Act. The compliance coordinator or secretary of state shall notify each registered athlete agent, in writing, of the interview period not later than the 30th day before the date the interview period is scheduled to begin. On receipt of a written request, the compliance coordinator shall provide a registered athlete agent with a copy of the standards adopted by the institution under Subsection (f) of this section.

(f) Each institution of higher education in this state shall adopt standards relating to the implementation of this Act at that institution. The standards must include specific guidelines relating to the athlete agent interview program, including the scheduling of interview periods, the duration of an interview period, locations on campus where interviews may be conducted, and the terms and conditions under which an athlete agent may contact an athlete during an interview period. The institution shall submit the standards to the institution's athletic council or analogous office for approval and shall file the standards with the secretary of state not later than the 30th day after the date the standards are approved. If the institution amends the standards, it shall file the amended standards with the secretary of state not later than the 30th day after the effective date of the amendment.

SECTION 8. Section 8, Chapter 13, Acts of the 70th Legislature, 2nd Called Session, 1987 (Article 8871, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 8. REMEDIES FOR VIOLATION; CRIMINAL PENALTY. (a) A registered or unregistered athlete agent who violates [~~Subsection (a) of Section 2 or Section 6 of~~] this Act may be subject to:

- (1) a civil penalty, as provided by Section 9 of this Act;
- (2) forfeiture of any right of repayment for anything of value [either] received by an athlete as an inducement to enter into any [agent] contract [~~or financial services contract or received by an athlete before completion of the athlete's last intercollegiate contest~~];
- (3) a refund of any consideration paid to the athlete agent on an athlete's behalf; and
- (4) reasonable attorney's fees and court costs incurred by an athlete in suing and recovering against an athlete agent for a violation of this Act.

(b) Any [agent] contract with an athlete [~~or financial services contract~~] that is negotiated by an unregistered athlete agent [~~who has failed to comply with this Act~~] is void.

(c) An athlete agent commits an offense if the agent intentionally or knowingly violates [~~Subsection (a) of Section 2 or Section 6 of~~] this Act or a rule adopted under this Act. An offense under this subsection is a Class A misdemeanor.

SECTION 9. Chapter 13, Acts of the 70th Legislature, 2nd Called Session, 1987 (Article 8871, Vernon's Texas Civil Statutes), is amended by adding Section 8A to read as follows:

Sec. 8A. CIVIL ACTION BY INSTITUTION. (a) An institution of higher education that is adversely affected by activities of an athlete agent who violates this Act may sue the athlete agent for damages as provided by this section.

(b) For purposes of this section, an institution of higher education is adversely affected by the activities of an athlete agent if, because of the activities of the athlete agent, the institution is disqualified or suspended from participation in intercollegiate sports contests

by a national association for the promotion and regulation of intercollegiate athletics and, because of that disqualification or suspension, the institution:

- (1) loses revenue from media coverage of sports contests;*
- (2) loses the right to grant athletic scholarships in the sport affected;*
- (3) loses the right to recruit athletes; or*
- (4) otherwise suffers an adverse financial impact.*

(c) An institution that prevails in a suit brought under this section may recover:

- (1) actual damages;*
- (2) exemplary damages;*
- (3) costs of court; and*
- (4) reasonable attorney's fees.*

SECTION 10. Subsection (b), Section 9, Chapter 13, Acts of the 70th Legislature, 2nd Called Session, 1987 (Article 8871, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The secretary of state may assess the civil penalty in an amount not to exceed \$25,000 [\$10,000]. In determining the amount of the penalty, the secretary shall consider the seriousness of the violation.

SECTION 11. Subsection (f), Section 5, Chapter 13, Acts of the 70th Legislature, 2nd Called Session, 1987 (Article 8871, Vernon's Texas Civil Statutes), is repealed.

SECTION 12. (a) This Act takes effect September 1, 1993.

(b) The changes made by this Act relating to criminal offenses apply only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(c) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

(d) An institution of higher education shall submit to the secretary of state the standards adopted by the institution under Subsection (f), Section 7, Chapter 13, Acts of the 70th Legislature, 2nd Called Session, 1987 (Article 8871, Vernon's Texas Civil Statutes), as added by this Act, not later than January 1, 1994.

(e) The secretary of state shall send the information required under Subsection (d), Section 3, Chapter 13, Acts of the 70th Legislature, 2nd Called Session, 1987 (Article 8871, Vernon's Texas Civil Statutes), as added by this Act, not later than January 1, 1994.

SECTION 13. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on March 2, 1993, by a viva-voce vote; the Senate concurred in House amendment on May 21, 1993, by a viva-voce vote; passed the House, with amendment, on May 19, 1993, by a non-record vote.

Approved June 3, 1993.

Effective Sept. 1, 1993.