

January 29, 1998

HOUSE BILL No. 1217

DIGEST OF HB1217 (Updated January 28, 1998 9:46 am - DI 94)

Citations Affected: IC 4-5.1.

Synopsis: Regulation of sports agents. Requires a person who acts as a sports agent within Indiana to hold a sports agent permit issued by the secretary of state. Allows the secretary of state to issue a sports agent permit to a person who meets specified requirements, including the posting of a bond. Provides that acting as a sports agent without a sports agent permit is a Class A misdemeanor. Specifies that an agent contract between a sports agent and a student athlete must be in writing, be notarized, and state the applicable fee. Requires a student athlete and a sports agent who enter into an agent contract to notify the student athlete's institution within 72 hours after executing the contract and before the student athlete has played in or practiced for any
(Continued next page)

Effective: January 1, 1999.

**Klinker, Bales, Summers,
Richardson**

January 8, 1998, read first time and referred to Committee on Economic Growth and Regulatory Relief.
January 28, 1998, reported — Do Pass.

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Digest Continued

intercollegiate athletic competition. Provides that failure of the student athlete to notify the educational institution subjects the student athlete to disciplinary action and civil liability for any harm resulting to the educational institution. Requires a sports agent to establish and maintain business records. Requires the sports agent to allow the secretary of state to inspect the sports agent's business records. Provides circumstances under which a student athlete may rescind an agent contract. Provides conditions under which a sports agent permit may be revoked or suspended. Provides causes of action under which an institution of higher learning may recover damages caused by a sports agent, a student athlete, or both.

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January 29, 1998

Second Regular Session 110th General Assembly (1998)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

HOUSE BILL No. 1217

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 4-5.1 IS ADDED TO THE INDIANA CODE AS A
2 NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JANUARY
3 1, 1999]:
4 ARTICLE 5.1. REGULATION OF SPORTS AGENTS BY THE
5 SECRETARY OF STATE
6 Chapter 1. Applicability and General Provisions
7 Sec. 1. This article applies to a student athlete during the
8 student athlete's period of:
9 (1) eligibility; and
10 (2) rescindability.
11 Sec. 2. This article does not apply to a student athlete who is
12 ineligible to participate in a particular intercollegiate sport with
13 respect to that particular intercollegiate sport.
14 Sec. 3. This article does not do the following:
15 (1) Prevent a student athlete from relinquishing eligibility to

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1 **compete in intercollegiate athletics and then entering into an**
 2 **agent contract.**

3 **(2) Impair the validity of an agent contract entered into by a**
 4 **student athlete before January 1, 1999.**

5 **Sec. 4. The secretary of state shall adopt rules to implement this**
 6 **article.**

7 **Chapter 2. Definitions**

8 **Sec. 1. Except as otherwise provided, the definitions in this**
 9 **chapter apply throughout this article.**

10 **Sec. 2. "Agent contract" means any of the following:**

11 **(1) An agreement in which a student athlete authorizes a**
 12 **sports agent to represent the student athlete in the marketing**
 13 **of the student athlete's athletic ability or athletic reputation.**

14 **(2) A loan or an advance of money that is related to a student**
 15 **athlete pursuing a professional sports career.**

16 **(3) The provision of services or material goods that are**
 17 **related to a student athlete pursuing a professional sports**
 18 **career.**

19 **Sec. 3. "Contact" means direct or indirect communication**
 20 **between a:**

21 **(1) sports agent; and**

22 **(2) student athlete;**

23 **for the purpose of executing or soliciting the execution of an agent**
 24 **contract.**

25 **Sec. 4. "Institution" means a public or private institution of**
 26 **higher learning located in Indiana.**

27 **Sec. 5. "Period of eligibility" refers to the period:**

28 **(1) beginning with a student athlete's enrollment at an**
 29 **institution; and**

30 **(2) ending with the last intercollegiate athletic competition in**
 31 **which the student athlete is permitted to compete under the**
 32 **rules of a national intercollegiate athletic association that**
 33 **governs an institution's intercollegiate athletic competition.**

34 **The term includes a period during which a student athlete would**
 35 **otherwise compete in an intercollegiate athletic competition, except**
 36 **for being disqualified for violating the rules of an association**
 37 **described in subdivision (2).**

38 **Sec. 6. "Period of rescindability" means the twenty (20) days**
 39 **following the expiration of a student athlete's period of eligibility.**

40 **Sec. 7. "Person" means an individual, a company, a**
 41 **corporation, an association, a partnership, or other legal entity.**
 42 **The term does not include a governmental agency.**



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1 **Sec. 8. "Sports agent"** means a person or the person's agent
 2 who, for a fee, directly or indirectly recruits or solicits a student
 3 athlete to enter into an agent contract. The term includes an
 4 attorney who acts as a sports agent for a student athlete but does
 5 not include an attorney who acts in the attorney's capacity as legal
 6 counsel for a student athlete in advising the student athlete about
 7 contractual matters involving a career in professional sports.

8 **Sec. 9. "Student athlete"** means an individual residing within or
 9 outside Indiana who:

- 10 (1) participates in an institution's intercollegiate athletic
 11 program;
 12 (2) formerly participated in an institution's intercollegiate
 13 athletic program and is in a period of rescindability; or
 14 (3) has informed an institution in writing of the individual's
 15 intent to participate at a future date in the institution's
 16 intercollegiate athletic program.

17 **Chapter 3. Requirements for Sports Agent Permit**

18 **Sec. 1.** A person who acts or attempts to act as a sports agent
 19 must hold a sports agent permit issued by the secretary of state
 20 under this chapter.

21 **Sec. 2. (a)** To obtain a sports agent permit under this chapter, a
 22 person must apply to the secretary of state on an application form
 23 designed and provided by the secretary of state.

24 (b) The applicant must sign the application form.

25 (c) The application form must require the applicant to affirm,
 26 under penalty of perjury, the following:

- 27 (1) That the applicant is at least eighteen (18) years of age.
 28 (2) That the applicant has paid a nonrefundable permit fee of
 29 two hundred fifty dollars (\$250) to the secretary of state.
 30 (3) That the applicant has not in any jurisdiction within the
 31 five (5) years preceding the date of the application been:

- 32 (A) convicted of;
 33 (B) found guilty of; or
 34 (C) entered a plea of nolo contendere for;

35 a crime that relates to the applicant's practice as a sports
 36 agent.

37 (4) That the applicant has not had:

- 38 (A) a sports agent license or permit suspended or revoked
 39 in another jurisdiction for a violation of the law of that
 40 jurisdiction; or
 41 (B) a civil judgment entered against the applicant for
 42 damages caused to an institution of higher learning located

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- 1 **within or outside Indiana resulting from a violation of the**
 2 **sports agent law of the jurisdiction in which the institution**
 3 **is located.**
- 4 **(5) That the applicant has not engaged in conduct that**
 5 **resulted in a penalty or sanction imposed against a college or**
 6 **university by an intercollegiate athletic association or athletic**
 7 **conference governing the college or university, regardless of**
 8 **whether criminal, civil, or administrative actions were**
 9 **commenced against the applicant.**
- 10 **(6) That the applicant has posted with the secretary of state a**
 11 **fifteen thousand dollar (\$15,000) surety bond issued by an**
 12 **insurance company authorized to do business in Indiana.**
- 13 **Sec. 3. The bond posted under section 2(c)(6) of this chapter**
 14 **must meet the following conditions:**
- 15 **(1) The bond must:**
- 16 **(A) be in favor of Indiana for the use and benefit; and**
 17 **(B) cover reasonable costs and attorney's fees;**
 18 **of a student athlete who is or an institution that is injured or**
 19 **damaged as a result of an act or omission by a sports agent**
 20 **acting under a permit issued under this chapter.**
- 21 **(2) The bond must provide that a sports agent is responsible**
 22 **for the acts or omissions of an agent acting under the sports**
 23 **agent's supervision or authority.**
- 24 **(3) The bond must cover all acts or omissions committed while**
 25 **the sports agent:**
- 26 **(A) holds a permit issued under this chapter; and**
 27 **(B) conducts business under the permit in Indiana.**
- 28 **Sec. 4. (a) Upon:**
- 29 **(1) verification of the affirmations described in section 2 of**
 30 **this chapter; and**
 31 **(2) the posting of the bond that meets the requirements**
 32 **provided in section 3 of this chapter;**
 33 **the secretary of state may issue a sports agent permit to the person**
 34 **submitting an application under section 2 of this chapter.**
- 35 **(b) If the secretary of state finds that:**
- 36 **(1) the requirements of sections 2 and 3 of this chapter have**
 37 **not been met; or**
 38 **(2) the applicant has provided false or inaccurate information**
 39 **on the application;**
 40 **the secretary of state may deny the permit.**
- 41 **Sec. 5. If the secretary of state determines that:**
- 42 **(1) a person possesses a valid permit or license from another**

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1 jurisdiction to act as a sports agent; and
 2 (2) the jurisdiction issuing the permit or license imposes
 3 substantially equivalent requirements on applicants for the
 4 permit or license as are imposed on applicants for an Indiana
 5 permit;

6 the secretary of state may issue a sports agent permit to the person
 7 upon the payment of the fee required under section 2(c)(2) of this
 8 chapter and the posting of the bond required under section 2(c)(6)
 9 of this chapter.

10 Sec. 6. A permit issued to a sports agent is not transferable.

11 Sec. 7. An agent contract between a:

- 12 (1) student athlete; and
 13 (2) person that does not have a sports agent permit issued
 14 under this chapter;

15 is void.

16 Sec. 8. A person who knowingly or intentionally violates section
 17 2 of this chapter commits a Class A misdemeanor.

18 Chapter 4. Agent Contracts and Penalties

19 Sec. 1. An agent contract between a sports agent and a student
 20 athlete must:

- 21 (1) be in writing;
 22 (2) be signed by the sports agent and the student athlete in the
 23 presence of a notary public, who must notarize the agent
 24 contract;
 25 (3) include the address of the sports agent to which notices
 26 may be sent; and
 27 (4) state the fee or other remuneration to be paid by the
 28 student athlete to the sports agent.

29 Sec. 2. When an agent contract is executed, a sports agent shall
 30 provide the student athlete with a signed and notarized copy of the
 31 agent contract.

32 Sec. 3. (a) When an agent contract is executed, a sports agent
 33 and the student athlete who enter into the agent contract shall
 34 provide written notice of the agent contract to the president or the
 35 athletic director of the institution where the student athlete is
 36 enrolled.

37 (b) The sports agent and the student athlete shall give the notice
 38 required under subsection (a) before any of the following occurs:

- 39 (1) Seventy-two (72) hours have elapsed since the student
 40 athlete signed the agent contract.
 41 (2) The student athlete practices for an intercollegiate athletic
 42 event.



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- 1 (3) The student athlete participates in an intercollegiate
2 athletic event.
- 3 **Sec. 4.** The sports agent's written notice required under section
4 3 of this chapter must be sent by registered or certified mail.
- 5 **Sec. 5.** Violation of section 3(a) of this chapter by a student
6 athlete may subject the student athlete to disciplinary action under
7 the student athlete's institution's rules for student conduct.
- 8 **Sec. 6.** If notification under section 3(b)(2) or 3(b)(3) of this
9 chapter is not received in the time required under this section, the
10 student athlete's eligibility period expires.
- 11 **Sec. 7.** It is unlawful for a sports agent to knowingly or
12 intentionally offer, give, or loan anything of value to:
- 13 (1) a student athlete; or
14 (2) an individual acting on behalf of the student athlete;
15 during the student athlete's period of eligibility for the purpose of
16 inducing the student athlete to enter into an agent contract.
- 17 **Sec. 8.** If a sports agent violates this chapter while executing an
18 agent contract, the agent contract is void.
- 19 **Sec. 9.** A sports agent that knowingly or intentionally violates
20 this chapter commits a Class D felony.
- 21 **Chapter 5. Permit Display; Maintenance of Business Records**
- 22 **Sec. 1.** A sports agent shall post and conspicuously display the
23 sports agent's permit or a legible copy of the sports agent's permit
24 in each office where the sports agent conducts business as a sports
25 agent.
- 26 **Sec. 2.** A sports agent that holds an active permit and engages
27 in business as a sports agent shall establish and maintain complete
28 financial and business records for at least four (4) years after the
29 date of the entry.
- 30 **Sec. 3.** A sports agent shall provide the secretary of state with
31 access during normal business hours to inspect and examine
32 financial or business records required to be kept under section 2 of
33 this chapter.
- 34 **Sec. 4.** The secretary of state may exercise subpoena powers to
35 obtain the financial and business records of a sports agent.
- 36 **Sec. 5.** If a sports agent violates this chapter while executing an
37 agent contract, the agent contract is void.
- 38 **Chapter 6. Rescindability of an Agent Contract by a Student**
39 **Athlete**
- 40 **Sec. 1.** A student athlete is entitled to rescind an agent contract
41 by giving written notice to the sports agent of the intent to rescind.
42 The notice must be given not more than twenty (20) calendar days

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1 following the date that the last of the following occurs:

- 2 (1) The agent contract is executed.
 3 (2) Written notification from the student athlete about the
 4 agent contract is received by the president or the athletic
 5 director of the student athlete's institution.
 6 (3) Written notification from the sports agent about the agent
 7 contract is received by the president or the athletic director of
 8 the student athlete's institution.

9 **Sec. 2.** A student athlete, while in a period of rescindability, may
 10 rescind a contract executed during the period of rescindability.

11 **Sec. 3.** The right to rescind provided under sections 1 and 2 of
 12 this chapter may not be waived. An attempted waiver of the right
 13 to rescind is ineffective.

14 **Sec. 4.** Money, services, or anything of value given by a sports
 15 agent to a student athlete may be retained by the student athlete as
 16 a gift if the student athlete rescinds an agent contract under this
 17 chapter.

18 **Chapter 7. Revocation or Suspension of a Sports Agent Permit**

19 **Sec. 1.** Commission of at least one (1) of the following acts is
 20 grounds for the secretary of state to revoke or suspend a sports
 21 agent's permit:

- 22 (1) Violating a law relating to the permit holder's practice as
 23 a sports agent, including a violation of this article.
 24 (2) Failing to account for or to pay, within thirty (30) days,
 25 assets belonging to another that have come into the control of
 26 the sports agent in the course of conducting business as a
 27 sports agent.
 28 (3) Engaging in conduct while acting as a sports agent that
 29 demonstrates bad faith or dishonesty.
 30 (4) Commingling money or property of another person with
 31 the sports agent's money or property and failing to maintain
 32 a separate trust or escrow account in an insured bank or
 33 savings and loan association located in Indiana in which all
 34 proceeds received for another person through the sports agent
 35 are deposited.
 36 (5) Accepting as a client a student athlete:
 37 (A) referred by; and
 38 (B) in exchange for consideration made to;
 39 an employee of or a coach for an institution.
 40 (6) Offering anything of value to a person, including a family
 41 member of the student athlete, to induce a student athlete to
 42 enter into an agent contract with the sports agent. However,



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1 negotiations regarding the sports agent's fee may not be
2 considered an inducement.

3 (7) Knowingly providing financial benefit from the permit
4 holder's business as a sports agent to another sports agent
5 whose license or permit to practice as a sports agent is
6 suspended or has been revoked within the previous five (5)
7 years.

8 (8) Committing mismanagement or misconduct as a sports
9 agent that causes financial harm to a student athlete or an
10 institution.

11 (9) Failing to include the sports agent's name and permit
12 number in advertising relating to business as a sports agent.

13 (10) Publishing or causing to be published false or misleading
14 information or advertisements, or giving false information or
15 making false promises to a student athlete concerning:

16 (A) employment; or

17 (B) counseling about or making of an investment or other
18 financial decision by a sports agent on behalf of a student
19 athlete.

20 (11) Violating or aiding and abetting another person to violate
21 the rules of an athletic conference or intercollegiate athletic
22 association governing a student athlete or a student athlete's
23 institution.

24 (12) Having contact with a student athlete that is prohibited
25 by this article.

26 (13) Postdating an agent contract.

27 (14) Having a sports agent permit successfully acted against
28 by a professional athletic club or association.

29 (15) Refusing to provide the secretary of state access to
30 financial and business records as required under IC 4-5.1-5-3.

31 **Sec. 2. A sports agent permit may not be suspended or revoked**
32 **because the sports agent:**

33 (1) contacts a student athlete by sending written materials,
34 provided that the sports agent simultaneously sends an
35 identical copy of the written materials to the athletic director
36 of the institution:

37 (A) in which the student athlete is enrolled; or

38 (B) to which the student athlete has provided a written
39 intent to participate in intercollegiate athletics; or

40 (2) contacts a student athlete, if the student athlete initiated
41 the contact with the sports agent and the sports agent gives a
42 written notice of the contact to the institution:

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- (A) in which the student athlete is enrolled; or
- (B) to which the student athlete has provided a written intent to participate in intercollegiate athletics.

Sec. 3. (a) An act or omission listed under section 1 of this chapter may be brought to the attention of the secretary of state by written complaint filed by an institution or a student athlete aggrieved by the act or omission.

(b) If the secretary of state finds from a complaint filed under subsection (a) that there is reasonable cause to believe that the act or omission occurred, the secretary of state shall commence a sports agent permit revocation or suspension hearing.

(c) A hearing held under this section must be conducted in the same manner as hearings are conducted under IC 4-21.5.

Chapter 8. Causes of Action

Sec. 1. A person who acts or attempts to act as a sports agent, regardless of whether the person has a sports agent permit:

- (1) consents to Indiana jurisdiction; and
- (2) appoints the secretary of state as the person's agent to accept service of process in a civil action related to the person's doing business as a sports agent.

Sec. 2. An institution has a cause of action for damages against a person who violates this article. An institution may seek equitable relief to prevent or minimize harm that arises from an act or omission that is or would be a violation of this article.

Sec. 3. If an act or omission in violation of this article by a student athlete or a sports agent results in an institution being penalized, disqualified, or suspended from participation in intercollegiate athletics by a national intercollegiate athletic association or by an intercollegiate athletic conference, the institution may recover against the student athlete or the sports agent, or both, for the institution's:

- (1) lost revenue from media coverage of an intercollegiate athletic competition;
- (2) lost ticket sales for a regular season or post-season athletic event;
- (3) loss of the right to grant an athletic scholarship;
- (4) loss of the right to recruit an athlete;
- (5) disqualification from participating in post-season athletic competition;
- (6) lost proceeds from a revenue sharing agreement or arrangement between institutions in an intercollegiate athletic conference;

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- (7) forfeiture of an intercollegiate athletic contest; or
- (8) other adverse financial impact.

Sec. 4. If a sports agent's act or omission allegedly causes a student athlete or an institution harm, the secretary of state shall conduct a hearing in the same manner as hearings are conducted under IC 4-21.5 to determine whether:

- (1) harm has been caused by the sports agent; and
- (2) the institution or the student athlete, or both, have sustained financial losses recoverable under the bond posted under IC 4-5.1-3-2.

Sec. 5. (a) After a hearing held under section 4 of this chapter, the secretary of state shall, if appropriate, distribute the proceeds of the bond posted under IC 4-5.1-3-2 to the parties sustaining losses, to the extent of those losses.

(b) Actions upon the bond and the right to payment under the bond extend solely to the secretary of state. However, if the secretary of state has not initiated an action upon the bond by scheduling and holding a hearing within thirty (30) days after a written request to do so, any claimant may initiate an action in the circuit court of Marion County to require the secretary of state to take action.

Sec. 6. If, after a hearing held under section 4 of this chapter, the secretary of state determines that the claims of the parties who have sustained financial losses recoverable under the sports agent's bond exceed the amount of the bond proceeds, the proceeds shall be prorated among the parties according to the ratio that each party's loss bears to the total amount of all proven losses.

Sec. 7. The determination of the secretary of state after a hearing held under section 4 of this chapter as to:

- (1) liability under the bond; and
- (2) the amount distributed under the bond;

is binding upon the principal and surety of the bond.

Sec. 8. The existence of a bond under IC 4-5.1-3-2 and the bond recovery procedure do not affect or alter another right or remedy that a person may have under applicable law. However, a recovery under a bond posted under IC 4-5.1-3-2 must offset liability assessed against a sports agent in another recovery under this chapter.

Sec. 9. In addition to the damages listed under section 3 of this chapter, an institution that prevails in an action brought under this article may recover:

- (1) punitive damages;

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1 (2) court costs;
 2 (3) reasonable attorney's fees; and
 3 (4) treble damages for a violation of this article that results in
 4 the ineligibility of a student athlete to compete, in an amount
 5 equal to three (3) times the value of the athletic scholarship
 6 furnished by the institution to the student athlete during the
 7 student athlete's period of eligibility.
 8 **Sec. 10. An institution or a student athlete must:**
 9 (1) commence an action under this chapter; or
 10 (2) petition the secretary of state for a hearing under section
 11 4 of this chapter;
 12 **within three (3) years after the date damages to the institution or**
 13 **student athlete resulting from a violation of this article are**
 14 **discovered or reasonably should have been discovered, whichever**
 15 **date is sooner.**
 16 **Sec. 11. If a student athlete and a sports agent are at fault under**
 17 **section 3 of this chapter, the student athlete and the sports agent**
 18 **are jointly and severally liable to an institution for damages**
 19 **awarded to the institution under this chapter.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Economic Growth, to which was referred House Bill 1217, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

SUMMERS, Chair

Committee Vote: yeas 12, nays 0.

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