

**STORAGE NAME:** h4529.brc

**DATE:** April 3, 1998

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
BUSINESS REGULATION AND CONSUMER AFFAIRS  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** HB 4529 (PCB BRCA 98-12)

**RELATING TO:** Athlete Agents

**SPONSOR(S):** Committee on Business Regulation and Consumer Affairs and Rep. Ogles and others

**COMPANION BILL(S):** None.

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) BUSINESS REGULATION AND CONSUMER AFFAIRS YEAS 5 NAYS 0
  - (2)
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  - (4)
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**I. SUMMARY:**

The bill repeals part IX of chapter 468, F.S., relating to the regulation of athlete agents, effective July 1st of the year enacted..

Regulation of athlete agents was first legislated in 1988. This legislation established a registration program. In 1995, legislation rewrote the original statute, implementing regulation as a profession. The number of active licensees in 1997 was 86, down from 284 in 1995. Athlete agents are administered directly under the Department of Business and Professional Regulation (DBPR), without an associated board.

Part IX of chapter 468, F.S., contains the provisions relating to regulation of athlete agents. An "athlete agent" is defined as a person who: (1) recruits or solicits a student athlete into an agent contract; (2) for compensation, obtains employment or promotional fees for the student athlete from a professional sports team; or (3) markets the student athlete's athletic ability or reputation.

The law provides for athlete agent contracts to include certain information related to disclosure, and provides that failure to provide this information makes the contract void and unenforceable. It requires the athlete agent and the student athlete to provide the school notification of entering into an agent contract within 72 hours, or before participating in an athletic event, upon penalty of a third degree felony. It provides that any student athlete may rescind the athlete agent contract at any time within 15 days of his having notified the school.

Basically, the regulation of the profession exists to prevent practitioners from limiting the eligibility of student athletes. Athlete agents may seek to represent athletes in signing contracts with professional sports teams or with other corporations through endorsement contracts. The rationale for regulation is, as stated by the DBPR, to enforce the eligibility requirements of the National Collegiate Athletic Association (NCAA).

In the past five years, there have been no significant disciplinary actions. There have been no revocations, suspensions, probations, or fines. In the past three years, there have been six legally sufficient complaints regarding athlete agents. An examination has been developed by the Department of Business and Professional Regulation (DBPR) and is required for licensure. The examination has a 100% passage rate.

As of June 30, 1997, athlete agents had a cash balance of \$26,132. It is projected that by June 30, 1999, there will be a negative trust fund balance of \$32,469.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Regulation of athlete agents was first legislated in 1988. This legislation established a registration program. In 1995, legislation rewrote the original statute, implementing regulation as a profession. The number of active licensees in 1997 was 86, down from 284 in 1995. Athlete agents are administered directly under the Department of Business and Professional Regulation (DBPR), without an associated board.

Part IX of chapter 468, F.S., contains the provisions relating to regulation of athlete agents. An "athlete agent" is defined as a person who: (1) recruits or solicits a student athlete into an agent contract; (2) for compensation, obtains employment or promotional fees for the student athlete from a professional sports team; or (3) markets the student athlete's athletic ability or reputation. It defines a "student athlete" as any Florida athlete who either participates in a college or university's intercollegiate athletics or has committed in writing to doing so, or any athlete who does not reside in Florida but either participates in a Florida college or university's intercollegiate athletics or has committed in writing to do so.

The law provides for athlete agent contracts to include certain information related to disclosure, and provides that failure to provide this information makes the contract void and unenforceable. It requires the athlete agent and the student athlete to provide the school notification of entering into an agent contract within 72 hours, or before participating in an athletic event, upon penalty of a third degree felony. It provides that any student athlete may rescind the athlete agent contract at any time within 15 days of his having notified the school. It provides that a postdated contract, a contract that takes effect at a future time, or a contract with an unlicensed athlete agent, is void and unenforceable.

The law provides for prohibited acts and provides that unlicensed athlete agent activity constitutes a third degree felony. It provides for civil action by the university or college against anyone who violates the provisions of the law and damages the school. It provides rule making authority, fee authority and authority to establish continuing education requirements.

In order to be licensed as an athlete agent a person must be: at least 18 years old; pay an application fee not to exceed \$500, actual cost of the examination plus \$500, and a license fee not to exceed \$2,000; provide information to demonstrate absence of a relevant criminal record; post a \$15,000 bond; and pass a department examination.

In the past five years, there have been no significant disciplinary actions. There have been no revocations, suspensions, probations, or fines. In fiscal year 1993-1994, there were eight legally sufficient administrative complaints, however, seven of these were for unlicensed activity. In fiscal year 1994-1995, there were four administrative complaints, but only one was found to have probable cause. Since that time there have been 3 legally sufficient complaints, but no discipline resulting.

A 1996 report by the Department of Business and Professional Regulation (DBPR) found that "the practice of athlete agents does not result in physical or mental harm to

the public. It can, however, result in financial harm to the public. Direct financial harm occurs only to limited members of the public: the athletes themselves.”

An individual athlete can see his or her education as well as a highly paid career destroyed by the improper activities of an athlete agent. Financial harm can also occur to the public indirectly; high schools, colleges, and universities can be harmed financially when the improper actions of an athlete agent prevent an athlete from eligibility for a sport at such institutions.

Since many of the sports in which such athlete agents are involved generate significant revenues for universities and colleges, loss of eligibility for athletes can result in financial loss which impacts the operations of a college or university. The impact to the financial condition of an educational institution also is tied to the alumni of an institution and their support for the institution and its athletic programs. It is clear that the regulation of the profession is intended to protect the welfare of both the athletes and the educational institutions at which they matriculate.

The regulation of the profession exists to prevent practitioners from limiting the eligibility of student athletes. Athlete agents may seek to represent athletes in signing contracts with professional sports teams or with other corporations through endorsement contracts. The rationale for regulation is, thus, to enforce the eligibility requirements of the National Collegiate Athletic Association (NCAA).

**B. EFFECT OF PROPOSED CHANGES:**

The bill repeals the regulation of athlete agents

**C. APPLICATION OF PRINCIPLES:**

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

The bill removes from DBPR the authority to make rules regarding the regulation of athlete agents.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

None.

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

Persons wishing to perform as athlete agents will not have to undergo the licensure or bonding costs.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. Persons will be allowed to practice as an athlete agent without having to comply with government imposed restrictions.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Part IX, of chapter 468, F.S., ss. 20165, 20.43, 232.435, 408.07, 443.101, 455.501, 455.607, 455.667, 489.109, and 489.519, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1. Repeals the sections which comprise part IX of chapter 468, F.S., relating to the regulation of athlete agents.

Sections 2-11. Amend ss. 20.165, 20.43, 232.435, 408.07, 443.101, 455.501, 455.607, 455.667, 489.109, and 489.519, F.S., making technical changes relating to renumbering existing statutory references..

Section 12. Provides that the bill shall take effect July 1 of the year in which enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments Section.

2. Recurring Effects:

See Fiscal Comments section.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments section.

4. Total Revenues and Expenditures:

See Fiscal Comments section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

Persons who wish to operate as athlete agents will not have to bear the costs of licensure.

3. Effects on Competition, Private Enterprise and Employment Markets:

The lack of licensure qualifications should foster an atmosphere of greater competition.

D. FISCAL COMMENTS:

The impact of deregulation will be to reduce DBPR's annual budget by \$42,813. One FTE is currently devoted to this program. Over the past two fiscal years, the average annual cost of the program was \$72,459. Over the next two fiscal years, the average annual revenue collected by DBPR to support this program is estimated to be \$54,900. At the end of fiscal year 1996-97, this program had a trust fund balance of \$26,132.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties and municipalities.

V. COMMENTS:

In a 1996 report by DBPR, the agency stated:

It is the opinion of DBPR that, while such a goal may be socially appropriate and important to educational institutions who are part of the NCAA, it is not a goal or purpose of high priority to the State of Florida or its citizens.

Other alternatives to the regulatory process exist in this instance. If the potential harm is to the athlete and to educational institutions from athlete agents who lead athletes to violate NCAA prohibitions, then the party with the responsibility to enforce the NCAA eligibility rules and standards is the NCAA and the educational institutions themselves. As stated by DBPR:

The student athletes, for instance, are being protected only from themselves and their own failure to determine the best course for their future. It seems incumbent on the educational institutions to provide the athletes with the information and support to be able to make informed decisions. In instances where athlete agents knowingly seek to misrepresent themselves before athletes and cause harm through their actions, the recourse of the legal system remains an appropriate avenue to pursue.

Other principles of regulation also fail to apply to the regulation of athlete agents. It is not a profession, in DBPR's opinion, that is of such importance to the State of Florida that it needs to be protected from corruption. Neither tax collection nor uniformity of regulation is an issue with athlete agents. Finally, the prevention of undesirable behavior in this instance is not of such nature or magnitude as to warrant overall industry regulation.



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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

Prepared by:

Legislative Research Director:

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