

STORAGE NAME: H1521.tu

DATE: March 14, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
TOURISM
ANALYSIS**

BILL #: HB 1521

RELATING TO: Athletic Agents

SPONSOR(S): Representative Andrews

TIED BILL(S):

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

- (1) TOURISM YEAS 6 NAYS 0
 - (2) BUSINESS REGULATION & CONSUMER AFFAIRS
 - (3) CRIME & PUNISHMENT
 - (4) CRIMINAL JUSTICE APPROPRIATIONS
 - (5)
-

I. SUMMARY:

House Bill 1521 amends Part IX of Chapter 468, F.S., relating to athlete agents for student athletes by creating s. 468.45615, F.S., relating to illegal inducements and by amending s. 468.4562, F.S., to civil actions by a college or university.

Section 468.45615, F.S., provides a criminal penalty of a second degree felony for athlete agents who provide illegal inducements to student athletes. A second degree felony is punishable by up to 15 years imprisonment and up to a \$10,000 fine. The new section specifies that the penalty is subject to the habitual felony provisions of s. 775.084, F.S., restitution under s. 775.089, F.S., and public service under s. 775.091, F.S. Section 468.45615, F.S., also provides that a person convicted under this section shall have his or her license suspended and may not employ, utilize, or otherwise collaborate with any person to recruit student athletes.

Section 468.4562, F.S., is amended to provide that a college or university which prevails in a civil action pursuant to the section may also recover treble damages.

The Department of Business and Professional Regulation states that the bill will not have a fiscal impact on the department. The department stated that the bill might have an impact on the criminal justice system if someone were to be prosecuted under the new provisions; however, the provision is not anticipated to be used often. The authorization of treble damages in civil actions could have a positive impact on universities and colleges; however, how often the provision will be used is unknown.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Athlete agents are regulated by the Department of Business and Professional Regulation under Part IX of Chapter 468, Florida Statutes.

Prior to October 1, 1995, Athlete agents were regulated in Florida under a registration scheme, established in Part IX of Chapter 468, Florida Statutes. State regulation of Athlete Agents was first authorized by Chapter 88-229, Laws of Florida. At that time, the regulation established in Part IX of Chapter 468, F.S., was that of a biennial registration. Until October 1, 1995, the regulation essentially remained the same other than a technical change made in 1991 to the penalty section in the contract language and the exemption for members of the Florida Bar inserted by the 1993 Legislature. In 1995, several changes were made to the law to strengthen the regulatory provisions for protection of student athletes and universities and colleges. The registration of athlete agents was replaced with licensure requirements.

Section 468.451, F.S., states that the intent of Part IX is to protect the interests of student athletes and academic institutions by regulating the activities of athlete agents.

Section 468.452(2), F.S., defines an "athlete agent" as a person who, directly or indirectly, recruits or solicits a student athlete to enter into an agent contract, or who, for any type of financial gain, procures, offers, promises, or attempts to obtain employment or promotional fees or benefits for a student athlete with a professional sports team or as a professional athlete, or with any promoter who markets or attempts to market the student athlete's athletic ability or athletic reputation.

Section 468.4561, F.S., provides that It is a criminal penalty of the third degree for a person to practice as an athlete agent without a license or to aid or abet a person to practice as an athlete agent without a license. Section 468.454(1), F.S., states that failure of an athlete agent to give the required 72 hours notice to a college or university when entering a contract with a student athlete is a third degree felony.

Prohibited acts are listed in section 468.456, F.S. Pursuant to s. 468.456(1)(f), F.S., an athlete agent may not offer anything of value to induce a student athlete to enter into an agreement by which the athlete agent will represent the student athlete. Section 468.456(1)(g), F.S., states that a licensed athlete agent may not knowingly provide

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financial benefit from his or her conduct of business to another athlete agent who license to practice as an athlete agent is suspended or has been permanently revoked within the previous 5 years. Additionally, one of the grounds for disciplinary action is having an athlete agent certification acted against by a professional athletic club or association (s. 468.456(1)(n), F.S.).

Violations of the prohibited acts and other regulatory provisions of Part IX are subject to administrative penalties which may include denial of licensure, a fine of up to \$5,000, a reprimand, probation, corrective action, restricted practice, and/or suspension or revocation of the license.

Section 458.4562, F.S., provides for civil action by a college or university which has suffered damages as a result of prohibited activity by an athlete agent. The section authorizes a college or university to seek equitable relief, such as an injunction, to prevent or minimize harm from such activity. A college or university prevailing in a civil action may recover actual damages, punitive damages, court costs, and reasonable attorney's fees.

There are currently 122 athlete agents with active licenses in the state.

C. EFFECT OF PROPOSED CHANGES:

House Bill 1521 amends Part IX of Chapter 468, F.S., relating to athlete agents for student athletes by creating s. 468.45615, F.S., relating to illegal inducements and by amending s. 468.4562, F.S., to civil actions by a college or university.

Section 468.45615, F.S., provides a criminal penalty of a second degree felony for athlete agents who provide illegal inducements to student athletes. A second degree felony is punishable by up to 15 years imprisonment and up to a \$10,000 fine. The new section specifies that the penalty is subject to the habitual felony provisions of s. 775.084, F.S., restitution under s. 775.089, F.S., and public service under s. 775.091, F.S. Section 468.45615, F.S., also provides that a person convicted under this section shall have his or her license suspended and may not employ, utilize, or otherwise collaborate with any person to recruit student athletes.

Section 468.4562, F.S., is amended to provide that a college or university which prevails in a civil action pursuant to the section may also recover treble damages.

D. SECTION-BY-SECTION ANALYSIS:

Not needed.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The authorization of treble damages in civil actions could have a positive impact on universities and colleges; however, how often the provision will be used is unknown. According to the Department of Business and Professional Regulation, the current law has not been used. Additionally, these damages are to recoup lost revenues because of certain by persons who violated Part IX of Chapter 468, F.S.

2. Expenditures:

The Department of Business and Professional Regulation states that the bill will not have a fiscal impact on the department. The department stated that the bill might have an impact on the criminal justice system if someone were to be prosecuted under the new provisions; however, the provision is not anticipated to be used often.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The economic impact on athlete agents who are complying with the law in the state could be positive if illegal practices are curtailed by the provisions of the bill. For those agents operating in violation, the penalty would have a definite negative impact.

D. FISCAL COMMENTS:

None

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:

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

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

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

As written, the bill raises some questions concerning what constitutes an "illegal inducement" and the timing of the process for the noncriminal penalties provided in section 1 of the legislation.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 13, 2000, the Tourism Committee unanimously passed HB 1521 with one amendment. The amendment by Representative Farkas does the following:

- Replaces the use of the term "illegal inducements" which is not defined in the new section to the use of a specific statutory cite involving inducements by athlete agents considered to be prohibited acts (s. 468.456(1)(f), F.S.);
- Clarifies that "any person" violating the specified section commits an act subject to criminal penalty;
- Prohibits a person convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a violation of s. 468.456(1)(f), F.S., from employing, utilizing, or otherwise collaborating with a licensed or unlicensed athlete agent in Florida to recruit student athletes. Provides a criminal penalty for violating the prohibition;
- Provides a criminal penalty for any person who knowingly actively assists in the recruitment of student athletes for a person who has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a violation of s. 468.456(1)(f), F.S.;
- Clarifies that the court, in addition to other penalties, may suspend a license pending outcome of administrative action by the Department of Business and Professional Regulation (DBPR) ; and,
- Adds a prohibited act for disciplinary action under s. 468.456, F.S., and requires DBPR to suspend or revoke a license for violation of certain prohibited acts under that section as well as the newly created section by the bill.

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VII. SIGNATURES:

COMMITTEE ON TOURISM:

Prepared by:

Staff Director:

Judy C. McDonald

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