

STORAGE NAME: h1477a.br.doc
DATE: April 12, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION
ANALYSIS**

BILL #: HB 1477
RELATING TO: Athletic Agents
SPONSOR(S): Representative Benson

TIED BILL(S):

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

- (1) BUSINESS REGULATION YEAS 6 NAYS 1
- (2) CRIME PREVENTION, CORRECTIONS & SAFETY
- (3) COUNCIL FOR SMARTER GOVERNMENT
- (4)
- (5)

I. SUMMARY:

HB 1477 creates the Uniform Athlete Agents Act and repeals Part IX of Chapter 468, F.S, which presently establishes athlete agent regulations. The bill preserves, under the authority of the Department of Business and Professional Regulation (DBPR), athlete agent regulation, but incorporates changes recommended by the National Conference of Commissioners on Uniform State Laws' Uniform Athlete Agents Act of 2000. The act establishes specific terms, to the benefit or protection of athletes, on agreements and "contact" between athletes and athlete agents.

The act also requires agents applying for registration or licensure to disclose information relating to: their training, experience, and education; whether they or an associate have been convicted of a felony or crime of moral turpitude, have been administratively or judicially determined to have made false or deceptive representations, have had their agent's license denied, suspended, or revoked in any state, or have been the subject or cause of any sanction, suspension or declaration of ineligibility; contracts and other records for a period of five years, including information about represented individuals and recruitment expenditures, and make this information open to inspection by the DBPR

The act provides for agents who are issued a certificate of registration or licensure in one state to be able to cross-file that application (or a renewal) in other states that have adopted the act. The act establishes terms under which both the agent and the student-athlete must give notice of the contract to third parties, and provides educational institutions with a statutory right of action against an athlete agent or former student athlete for damages, losses, and expenses incurred as a result of the educational institution being penalized or disciplinary actions being self imposed to mitigate sanctions. The act prohibits athlete agents from providing false or misleading information or making a false promise with the intent of inducing a student athlete to enter into a contract, or from furnishing anything of value to a student athlete or another person before that athlete enters into a contract.

The DBPR estimates that fee reductions incorporated in the bill would lower revenues and thus negatively impact the Professional Regulation Trust Fund.

On April 12,2001, the Committee on Business Regulation adopted a strike everything amendment that is traveling with the bill. The amendment essentially redrafts the language of the bill to incorporate the changes into the current organization of the athlete agent provisions.

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:

Currently, athlete agents are regulated by the DBPR 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.

Chapter 88-229, Laws of Florida, first authorized state regulation of Athlete Agents. Previously, the regulation established in Part IX of Chapter 468, F.S., was 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.

Among other requirements, applicants for licensure must:

- o Be at least eighteen years of age
- o Be of good moral character and submit to a criminal records background check
- o Pass an examination
- o Post a \$15,000 surety bond, which must be renewed with each license renewal
- o Pay an application and examination fee

The following statutory penalties are currently established:

- o Unlicensed Activity: An administrative or civil fine greater than \$500 but less than \$5,000, notice to cease and desist, and a felony of the third degree
- o Administrative: \$5,000 fine for each count or separate offense, reprimand, probation, or restriction in scope of practice, and denial of certification for exam or licensure, or revocation of license
- o Civil: Colleges and universities may sue for damages

C. EFFECT OF PROPOSED CHANGES:

The bill entitled, " The Uniform Athlete Agents Act", provides for the uniform registration, certification, and background check of sports agents seeking to represent student athletes who are or may be eligible to participate in intercollegiate sports, imposes specific contract terms on these

agreements to the benefit of student athletes, and provides educational institutions with a right to notice along with civil cause of action for damages resulting from breach of specific duties.

The act retains DBPR as the regulatory authority for athlete agents, deletes two existing definitions and establishes several others, and provides for athlete agent registration and temporary registration. The act retains application fees, but omits licensure or registration fees, and requires the following information from applicants, some of which is in addition to present requirements:

- Disclose their training, experience, and educational training.
- Provide whether they or an associate have been convicted of a felony or crime of moral turpitude
- Have been administratively or judicially determined to have made false or deceptive representations
- Have had their agent's license denied, suspended, or revoked in any state, or have been the subject or cause of any sanction, suspension or declaration of ineligibility.

Additionally, the act requires agents to maintain executed contract and other specific records for a period of five years, including information about represented individuals and recruitment expenditures, and make this information open to inspection by DBPR.

While the act imposes or maintains significant disclosure, registration, and record-keeping requirements on athlete agents, those who are issued a valid certificate of registration or licensure in one state would be able to cross-file that application (or a renewal thereof) in all other states that have adopted the act.

Finally, the act establishes or reaffirms restrictions prohibiting athlete agents from providing materially false or misleading information or making a materially false promise or representation with the intent of inducing a student athlete to enter into an agency contract, or from furnishing anything of value to a student athlete or another person before that athlete enters into an agency contract. The act establishes or reaffirms the athlete agents may not intentionally initiate contact with a student athlete unless registered under this act, and may not refuse or willfully fail to retain or permit inspection of required records, fail to register where required, provide materially false or misleading information in an application for registration or renewal thereof, predate or postdate an agency contract, or fail to notify a student athlete (prior to signing) that signing an agency contract may make the student athlete ineligible to participate as a student athlete in that sport. The act imposes criminal penalties for violations of these prohibitions.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Creates s. 468.4511, F.S., Short Title, to provide for the short title for the Uniform Athletic Agents Act.

Creates s. 468.4612, F.S., Definitions, establishes definitions for Agent Contract, Athlete Agent, Athletic Director, Contract, Department, Endorsement Contract, Intercollegiate Sport, Person, Professional-Sports-Services Contract, Record, Registration, State, and Student-Athlete.

Creates s. 468.4613, F.S., Service of Process; Subpoenas, establishes that by acting as an athletic agent in this state, a non-resident individual can appoint the DBPR as the individual's agent for service of process in any civil action in the state related to the individuals acting as an athlete agent in the state. The bill also provides that the DBPR may issue subpoenas for any material that is relevant to the bill.

Creates s. 468.4614, F.S., Athlete Agents; Registration Required; Void Contracts, establishes registration requirements for athlete agents such that before being issued a certificate of

registration, an individual may act as an athletic agent for all purposes, except for signing an agency contract, if a student athlete or another person on behalf of the student-athlete initiates communication with the individual, and, within 7 days after an initial act as an athlete agent the individual submits to DBPR an application for registration as an athletic agent. An agent contract resulting from such conduct in violation of the section is void.

Creates s. 468.4615, F.S., Registration of Athlete Agent; Form; Requirement, establishes that an applicant must submit an application for registration to the DBPR, in a form so prescribed by them, and contain information regarding the applicant, the applicant's business or employer, the applicant's present and past business engagements, training, criminal background, administrative and judicial determinations, misconduct resulting in restrictions in participating in any interscholastic or intercollegiate athletic event, instances of occupational or professional misconduct, and whether they, or any business partners, managers, officers, associates, and members have ever been denied an application for, or experienced suspension or revocation of, a license or registration to practice as an athlete agent in any state. Additionally, the section establishes that applicants must provide DBPR with the names and addresses of three individuals, unrelated to the applicant, who are willing to serve as references.

Section 468.4615, F.S., also establishes provisions allowing applicants who applied for and hold either a certificate of registration or license as an athletic agent in another state to submit a copy of the application and certificate in lieu of submitting an application in the form prescribed by DBPR. The department must accept the application and certificate from the other state as an application for registration in the state if the application was:

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

Section 468.4616, F.S., Certificate of Registration; Issuance or Denial, establishes that except as otherwise provided, the DBPR must issue a certificate of registration to an individual who complies with s. 468.4615(1), F.S., or whose application has been accepted under s. 468.4615(2), F.S. The department may refuse to issue a certificate of registration if the DBPR 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 that determination, the DBPR may consider whether the applicant has ever been convicted of a crime that, if committed in the state, 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 athletic agent, or engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity or prohibited by s. 468.4625, F.S. They may also consider if the applicant has ever had a registration or licensure as an athletic agent suspended, revoked, or denied or been refused renewal of registration or licensure as an athlete agent in any state, engaged in conduct the consequences 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, or engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty or integrity.

The section also provides that in making a determination regarding the above, the DBPR must consider how recently the conduct occurred; the nature of the conduct and the context in which it occurred; and any other relevant conduct of the applicant.

The section also provides that an athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the department, and establishes that a certificate of

registration or a renewal of a registration is valid for 2 years. An application filed under this section is public record and must be signed under penalty of perjury. An individual who has submitted an application for renewal of registration or licensure in another state, in lieu of submitting an application for renewal in the form prescribed by DBPR may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. The DBPR shall accept the application for renewal from the other state as an application for renewal in this state if the application was submitted in the other state within 6 months next preceding the filing in this state, the applicant certified the information is current, and it contains information substantially similar to or more comprehensive than that required in an application for renewal required by DBPR, and was signed by the applicant under penalty of perjury.

Section 468.4617, F.S., Suspension, Revocation, or Refusal to Renew Registration, establishes that the DBPR may suspend, revoke, or refuse to renew a registration for conduct that would have justified denial or registration under s. 468.4616(2), F.S. In addition, the DBPR may deny, suspend, revoke, or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing pursuant to Chapter 120, F.S.

Section 468.4618, F.S., Temporary Registration, establishes that the DBPR may issue a temporary certificate of registration while an application for registration or renewal of registration is pending.

Section 468.4619, F.S., Registration and Renewal Fees, establishes a \$500 fee schedule for individuals seeking registration or registration renewal as athlete agents.

Section 468.4621, F.S., Required Form of Contract, establishes requirements for contracts between athlete agents and athletes. These include requirements establishing that such contracts must:

- State or contain the amount and method of calculating the consideration to be paid by student-athlete for services to be provided by the athlete agent under the contract
- 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
- Description of any expenses that the student-athlete agrees to reimburse, and a description of the services to be provided to the student-athlete
- The duration of the contract, and the date of the execution.

Finally, the section establishes that contracts constructed pursuant to this act must contain in close proximity to the signature of the student-athlete, verbatim, a warning notice, as stipulated, in the section.

The bill provides that a contract that does not conform to this section is avoidable 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 contract. The athletic agent shall give a record of the signed or otherwise authenticated contract to the student-athlete at the time of execution.

Section 468.4622, F.S., Notice to Educational Institution, establishes disclosure requirements for athlete agents and student-athletes, stipulating that each shall, within 72 hours after entering into a contract or before the next scheduled athletic event in which the student-athlete may participate, whichever occurs first, 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, for athlete agents, had reasonable grounds to believe the student-athlete intended to enroll.

Section 468.4623, F.S., Student-Athlete's Right to Cancel, establishes that a student-athlete may cancel a contract by giving notice of the cancellation within 14 days after the contract is signed and that the student-athlete may not waive the right to cancel a contract. If a student-athlete cancels a 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 include the student-athlete to enter into the contract.

Section 468.4624, F.S., Required Records, establishes that an athlete agent shall retain for a period of 5 years certain records relating to individuals represented by the athlete agent, contracts entered into by the athlete agent, and direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract. The bill provides that these records are to be retained and open to inspection by the DBPR during normal business hours.

Section 468.4625, F.S., Prohibited Conduct, establishes that an athlete agent, with the intent to induce a student-athlete to enter into a contract may not give false or misleading information or make a false promise or representation, furnish anything of value to a student-athlete before the student-athlete enters into the contract, or furnish anything of value to any individual other than the student-athlete or another registered athlete agent. In addition, an athlete agent may not intentionally initiate a contract with a student-athlete unless registered pursuant to the bill refuse or fail to retain or permit inspection or the records required to be retained, or fail to register. They also shall not provide materially false or misleading information in an application for registration or renewal or registration, predate or post date any agency contract, or fail to notify a student-athlete before the student-athlete signs or otherwise authenticates a 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.

Section 468.4626, F.S., Criminal Penalties, establishes that an athlete agent who violates s. 468.4625, F.S., commits a felony of the second degree, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.

Section 468.4627, F.S., Civil Remedies, establishes that an educational institution has a right of action against an athlete agent or a former student-athlete for damages caused by violation. In an action under this section, the court may award the prevailing party costs and reasonable attorney's fees. Damages of an educational institution include losses and expenses incurred as a result of the conduct of the athletic agent or former student-athlete, whereby the educational institution was injured, penalized, disqualified, or suspended from participation in athletics by a national association for the promotion and regulation of athletics, athletic conference, or by reasonable self-imposed disciplinary action taken to mitigate sanctions likely to be imposed.

In addition, the bill provides that 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 is several and not joint. The section also provides that civil remedies do not restrict rights, remedies or defenses of any person under law or equity.

Section 468.4628, F.S., Administrative Penalty, establishes that the DBPR may assess a civil penalty against an athlete agent not to exceed \$25,000 for a violation.

Section 468.4629, F.S., Uniformity of Application and Construction, establishes that consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that have enacted the Uniform Athlete Agents Act.

Section 468.4631, F.S., Electronic Records, Signatures, and Contracts, establishes that provisions governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures, conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000), and supercede, modify, and limit the Electronic Signatures in Global and National Commerce Act.

Section 2: Repeals ss. 468.451, 468.452, 468.453, 468.4535, 468.4536, 468.454, 468.456, 468.4561, 468.45615, 468.4562, 468.4563, 468.4564, 468.4565, 468.457, F, S.

Section 3: Provides that any person who, on the effective date of the act, has a valid license as an athlete agent issued under the provisions of Part IX of chapter 468, F.S., and repealed by section 2, shall be considered registered under the newly created act until the ensuing renewal period. At the time of renewal, such person must register as required under the provision of part IX of chapter 468, F.S., created by the act.

Section 4: Establishes that provisions of the act, if held invalid, are severable from other provisions in the act.

Section 5: Provides a July 1, 2001 effective date.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

If the DBPR estimates are correct, the new fee structure established in the act will lower revenues derived from athlete agent licensure or registration by approximately \$35,840 per year¹

2. Expenditures:

None anticipated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Currently, applicants pay application, examination, licensure, unlicensed activity, and criminal records check fees totaling \$1,594 (\$1,444 for members of the Florida Bar). Licensees pay \$440 for renewal every two years. Under the act, a registrant would pay \$500 for registration and \$500 for registration renewal, thus resulting in lower total fees.

¹ From data provided by the Department of Business and Professional Regulation, 03-28-01.

D. FISCAL COMMENTS:

DBPR estimates that due to the lowering or elimination of fees, the act would have a negative impact on the Professional Regulation Trust Fund. However, the act's provisions allowing for athlete agent registration via interstate reciprocity may result in more individuals applying for registration in Florida. Depending on the variable costs incurred by the DBPR for each athlete agent registration and registration renewal, an increase in the number of applicants could make up any suggested negative impact.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The 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 counties or municipalities have to raise revenues.

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 noted.

B. RULE-MAKING AUTHORITY:

All rules regulating athlete agents, as promulgated under Part IX, Chapter 468, F.S., are repealed in the bill. DBPR suggests that the bill does not provide necessary rulemaking authority.²

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 12, 2001 the Committee on Business Regulation adopted a strike everything amendment that is traveling with the bill. The amendment removes several definitions and expands the definition of "athlete agent" to include "runners" (persons who act on the behalf of the agent). "Student athlete" is defined to include a student who is 21 years of age and retains intercollegiate eligibility.

The amendment applies current statutory requirements for licensure rather than creating a registration procedure. It reorganizes current statutory provisions, as well as, provisions of the bill into a more concise organization.

² *Ibid* at 1

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VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION:

Prepared by:

Staff Director:

Randall C. Wasserman/Alan W. Livingston

M. Paul Liepshutz