

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2066

SPONSOR: Regulated Industries Committee and Senators King and Smith

SUBJECT: Uniform Athlete Agents Act

DATE: April 11, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Vaccaro	Caldwell	RI	Favorable/CS
2.	_____	_____	JU	_____
3.	_____	_____	FT	_____
4.	_____	_____	AGG	_____
5.	_____	_____	AP	_____
6.	_____	_____	_____	_____

I. Summary:

This bill amends sections of Part IX of chapter 468, Florida Statutes. It amends certain definitions, revises licensure requirements, makes the Department of Business and Professional Regulation an agent for out-of-state athlete agents for the purpose of service of process, and provides for temporary licensure pending the application process. The bill modifies contract provisions and notice requirements. The bill increases the penalty amount the department can assess for prohibited acts, provides additional criminal remedies for certain acts, and provides additional civil remedies for educational institutions. The bill also revises business records requirements and repeals provisions relating to continuing legal education and licensure display.

This bill substantially amends the following sections of the Florida Statutes: 468.452; 468.453; 468.454; 468.456; 468.45615; 468.4562; and 468.4565.

This bill repeals the following sections of the Florida Statutes: 468.4563 and 468.4564.

II. Present Situation:

Section 468.452, F.S., defines the term “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. The term “student athlete” is defined as any student who: (a) resides in Florida, has informed, in writing, a college or university of the student’s intent to participate in that school’s intercollegiate athletics, or who does participate in that school’s intercollegiate athletics and is eligible to do so; or (b) does not reside in Florida, but has informed, in writing, a

college or university in Florida of the student's intent to participate in that school's intercollegiate athletics, or who does participate in that school's intercollegiate athletics and is eligible to do so.

Section 468.453, F.S., requires any person who practices as an athlete agent to be licensed. A license will be granted if, in part, the applicant: (a) passes an examination provided by the department regarding the applicant's proficiency to practice as an athlete agent; (b) pays an application fee not to exceed \$500, an examination fee not to exceed the cost of the examination plus \$500, and a licensure fees not to exceed \$2,000; (c) submits to the department a fingerprint card for a criminal history records check; and (d) posts with the department a \$15,000 surety bond for any damages incurred by a student athlete or college or university resulting from the acts or omissions of the athlete agent.

Section 468.454, F.S., requires, in part, that upon entering an agent contract, an athlete agent and student athlete provide notice to the athletic director or president of the college or university in which the student athlete is enrolled, prior to the student athlete practicing or engaging in an intercollegiate athletic event, or within 72 hours of entering the agent contract, whichever comes first. This section provides that a student athlete may rescind the agent contract within 15 days after the athletic director or president of the college or university receives notice of the agent contract. This section also requires that the agent contract contain a statement that: (a) warns the student athlete of the potential loss of eligibility to compete in intercollegiate sports resulting from the contract; and (b) explains the 72 hour notice requirement and 15 day right to rescind the contract.

Section 468.456, F.S., provides, in part, that the department may impose one or more of the penalties provided for in Section 455.227, F.S., upon any person guilty of a prohibited act under section 468.456, F.S. Section 455.227, F.S., provides, in part, that the department may impose one or more of the following penalties: refusal to certify an applicant; suspension or revocation of a license; imposition of restrictions on the licensee; assessment of up to a \$5,000 administrative fine for each count or offense; issuance of a reprimand; probation; or corrective action.

Section 468.45615, F.S., provides, in part, that any person who offers anything of value to any person to induce a student athlete to enter an agent agreement is guilty of a felony of the second degree.

Section 468.4562, F.S., provides, in part, that a college or university may sue for damages any person who violates part IX of chapter 468, F.S.

Section 468.4563, F.S., requires that athlete agents complete 20 hours of continuing education during a biennial licensure cycle. Athlete agents are also required to display licenses pursuant to section 468.4564, F.S.

Section 468.4565, F.S., requires that athlete agents establish and maintain business and financial records for a period of four years.

III. Effect of Proposed Changes:

Section 1 amends subsections (2) and (5) of section 468.452, F.S. The bill amends the definition of the term “athlete agent” to include all employees and other persons acting on behalf of an athlete agent. It specifies that the definition does not include the spouse, parent, sibling, grandparent, or guardian of the student athlete, nor does it include an individual acting on behalf of a professional sports team or professional sports association. The term “student athlete” is amended to include a student who is less than 21 years of age and may be eligible in the future to engage in intercollegiate athletics.

Section 2 amends section 468.453, F.S., to eliminate the examination requirement and related fee for licensure. Prior to obtaining a certificate of registration, an individual may act as an athlete agent if communication is initiated by a student athlete or a person acting on behalf of a student athlete, and the individual acting as an athlete agent submits an application with the department within seven days of such contact. This bill also provides that a non-resident athlete agent, by doing business in Florida, appoints the department as the individual’s agent for service of process in Florida civil actions relating to the individual’s actions as an athlete agent in this state. Finally, the department may issue a temporary registration while an application is pending.

Section 3 amends section 468.454, F.S. It requires that agent contracts be a signed, or otherwise authenticated, record. It also expands the provisions contained in the agent contract to include: (a) the name of any person not listed in the athlete agent license application who receives compensation from the agent contract; (b) a description of any expenses the student athlete agrees to reimburse; and (c) a description of the services to be provided by the student athlete.

Noticing requirements are similar to the provisions set forth under the current law. There is still a 72-hour notification period; however, the athlete agent and student athlete are only required to provide notice to the athletic director, not the president, of the college or university. The actual reference to the term “notice” also changes. The bill specifies that the athlete agent is required to give “record notice” to the athletic director, whereas the student athlete is required to “inform” the athletic director of the contract.

This bill modifies the period of time for which a student athlete may rescind a contract, and provides the student athlete with additional rights. Under the proposed law, the student may rescind within 14 days of entering the contract. Further, the student athlete is not required to pay consideration under the contract or to return any consideration received by the athlete agent to induce the student athlete to enter the contract, in the event the student athlete cancels or voids the contract. The bill still maintains the requirement that the agent contract include notice regarding eligibility, the student athlete’s right to cancel, and the notification requirements, but the language is abbreviated. Finally, the bill requires that the athlete agent provide the student athlete with a record of the contract.

Section 4 amends subsection (3) of section 468.456, F.S. to increase the administrative fine assessed by the department from \$5,000 to \$25,000.

Section 5 creates subsection (4) of section 468.4615, F.S. to provide for additional prohibitions that constitute criminal activity. The athlete agent is prohibited from doing the following to

induce a student athlete to enter a contract: (a) giving any false or misleading information or making a materially false promise; (b) furnishing anything of value to the student athlete prior to entering the contract; and (c) furnishing anything of value to any individual other than the student athlete or another athlete agent. Further, the athlete agent may not intentionally: (a) initiate contact with a student unless registered; (b) refuse to retain or permit inspection of records; (c) provide false or misleading information in an application; (d) predate or postdate a contract; (e) fail to give notice of the existence of an agent contract as required by section 468.454(6), F.S.; and (f) fail to notify a student athlete prior to signing or authenticating a contract that the student may become ineligible to participate in intercollegiate athletics.

Section 6 amends section 468.4562, F.S., to provide additional civil remedies to educational institutions. Pursuant to the bill, these institutions are deemed to suffer damages resulting from self-imposed disciplinary action taken to mitigate sanctions imposed by an organization such as a national association for the promotion and regulation of athletics or an athletics conference. Further, the educational institution is permitted to seek damages from former student athletes for a violation of part IX, chapter 468, F.S., and provides that a right of action does not accrue until the educational institution discovers, or by exercise of reasonable diligence would have discovered, the violation. Finally, the amendment provides that this part does not restrict the rights, remedies, or defenses of any person under law or equity.

Section 7 amends section 468.4565, F.S., to remove the reference to remove the reference to licensure, increase the records period to five years, and to specify the information contained therein.

Section 8 repeals sections 468.4563 and 468.4564, F.S.

Section 9 provides that the bill takes effect July 1, 2001.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Examination and licensure fees are eliminated. Revenues collected by the Department of Business and Professional Regulation will therefore decrease. The decrease will be offset by

the elimination of the time and expense necessary for the department to administer the exam required by current law.

B. Private Sector Impact:

Athlete agents will have fewer restrictions and expenses in obtaining registration. This is offset, however, by greater overall protection for student athletes as a result of stricter administrative penalties, including higher fines, and broader criminal sanctions against athlete agents. Athlete agents will also be held to higher record keeping standards. Student athletes are also provided the right to retain consideration when contracts are rescinded.

Private educational institutions are also afforded greater protection through civil remedies. Under this bill, the scope of damages suffered by those institutions is broadened, former student athletes may be sued, and the time to initiate a right of action is extended.

C. Government Sector Impact:

The Department of Business and Professional Regulations will receive fewer fees but will no longer have to administer examinations.

Public educational institutions are afforded greater protection as discussed under the Private Sector Impact statement regarding private educational institutions.

VI. Technical Deficiencies:

- The terms “record” and “inform” referenced in the amendment to subsections (2) and (5) of section 468.452, F.S., are not defined.
- The amendment to section 468.454, F.S., in part, authorizes a student to retain any consideration received as an inducement to enter a contract upon rescinding the contract. The proposed creation of subsection (4) of section 468.4615, F.S., however, prohibits such consideration from being made by the athlete agent, and makes such conduct a second degree felony.

VII. Related Issues:

None.

VIII. Amendments:

None.