

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: SB 332

SPONSOR: Senator King

SUBJECT: Athlete Agents

DATE: January 3, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Vaccaro</u>	<u>Caldwell</u>	<u>RI</u>	<u>Favorable</u>
2.	<u>Matthews</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable</u>
3.	_____	_____	<u>FT</u>	_____
4.	_____	_____	<u>AGG</u>	_____
5.	_____	_____	<u>AP</u>	_____
6.	_____	_____	_____	_____

I. Summary:

This bill substantially revises the regulatory provisions of Part IX of ch. 468, F.S., governing athlete agents, as follows:

- Expands the definition of athlete agent to include all employees and other persons acting on behalf of the athlete agent;
- Excludes from the definition of athlete agent specified relatives and persons acting solely for a professional sports team or a professional sports organization and thus from the application of the law;
- Eliminates the licensure requirements for examination, payment of associated fees and bond;
- Allows an unlicensed athlete agent to practice under specified circumstances;
- Designates the Department of Business and Professional Regulation as the agent for service of process for non-resident athlete agents;
- Provides for temporary licensure pending the application process under specified circumstances;
- Allows for licensure application reciprocity under specified circumstances;
- Modifies mandatory contract provisions and disclosure and notice requirements;
- Increases the administrative penalty from \$5,000 to \$25,000 for prohibited acts;
- Provides for additional criminal penalties for certain acts;
- Enhances civil remedies for educational institutions by broadening scope of recoverable damages, by holding former student athletes and athlete agents severally liable and by extending the time to initiate action;
- Revises business records requirements and extends record keeping requirements from four to five years; and
- Repeals continuing education and licensure display requirements.

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 ss. 468.4563 and 468.4564 of the Florida Statutes.

II. Present Situation:

In 1988, the Legislature enacted law providing for the regulation of athlete agents by the Department of Business and Professional Regulation (department). *See* ch. 88-229, L.O.F.; Part IX, ch. 468, F.S. The act was based on the legislative finding that dishonest and unscrupulous practices by athlete agents can seriously harm student athletes and the educational institutions that they attend. In 1995, the Legislature altered the basic regulatory framework to impose stricter regulatory requirements governing athlete agents, and more particularly athlete contracts. *See* ch. 95-307, L.O.F. In 2000, the Legislature enhanced the criminal, civil, and administrative sanctions of the athlete agent laws. *See* ch. 2000-356, L.O.F.

1. Definitions

An “athlete agent” is defined 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. *See* s. 468.452, F.S. A “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. *See* s. 468.452, F.S.

2. Licensure

Any person practicing as an athlete agent must be licensed. A licensee applicant must:

- (a) Pass an examination provided by the department regarding the applicant’s proficiency to practice as an athlete agent;
- (b) Pay an application fee not to exceed \$500, an examination fee not to exceed the cost of the examination plus \$500, and a licensure fee not to exceed \$2,000;
- (c) Submit to the department a fingerprint card for a criminal history records check; and
- (d) Post 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. *See* s. 468.453, F.S.

Members of the Florida Bar are exempt from the examination requirement. In addition, an athlete agent must complete 20 hours of continuing education during a biennial licensure cycle. *See* s. 468.4563, F.S. An athlete agent is also required to display his or her license. *See* s. 468.4564, F.S. An athlete agent’s business and financial records must be kept for four years. *See* s. 468.4565, F.S.

3. Contracts

An athlete agent and a student athlete must provide notice to the respective student's college or university athletic director or president (where the student is enrolled) when entering into a contract with the athlete agent. The notice must be provided prior to participation in an intercollegiate athletic event or within 72 hours of entering the contract, whichever comes first. *See* s. 468.454, F.S. The student athlete may rescind the contract within 15 days after the notice is provided. The contract must contain a statement to the student athlete 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 subject to criminal prosecution; and c) States a student athlete's right to rescind the contract within 15 days.

4. Disciplinary Criminal and Civil Penalties and Remedies

There are a number of disciplinary, civil and criminal penalty provisions. For example, disciplinary penalties provided under s. 455.227, F.S., include but are not limited to, 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 other corrective action imposed by the department for violations of prohibited acts by athlete agents under s. 468.456, F.S. The criminal offenses include a felony of the second degree for any person who offers anything of value to any person to induce a student athlete to enter an agent agreement. *See* s. 468.45615, F.S. In addition, a college or university may sue for damages any person who violates the athlete agent laws. *See* s. 468.4562, F.S.

III. Effect of Proposed Changes:

Section 1 amends subsection (2) of s. 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, which will subject them to the application of the athlete agent law. It excludes a spouse, parent, sibling, grandparent, or guardian of the student athlete, or an individual acting on behalf of a professional sports team or professional sports association.

Section 2 amends s. 468.453, F.S., to eliminate the examination requirement and related examination fee. It also eliminates the \$15,000 surety bond requirement. It removes the examination exemption for Florida Bar members. It also allows an unlicensed individual to act as an athlete agent if: 1) contact is first initiated by the student athlete or someone acting on his or her behalf and 2) the unlicensed individual submits an application for licensure within 7 days of such contact. For non-resident athlete agents, the department is designated as the agent for receipt of service of process in any civil action related to the agent. The department may issue a temporary registration while an application is pending. Finally, this section provides reciprocity for out-of-state licensees. The licensee may submit a copy of his or her application and certificate, registration or licensure from the other state in lieu of submitting a Florida application. If the applicant meets all other requirements for licensure, the department must accept the application and licensure if the out-of-state application: (a) was submitted within 6 months preceding the application in Florida; (b) contains information substantially similar or more comprehensive than required in an application submitted in Florida; and (c) was signed by the applicant under penalty of perjury.

Section 3 amends s. 468.454, F.S. It requires an agent contract to be placed in a signed, or otherwise authenticated, record. It expands the required contents of an agent contract to include: (a) the amount and method of calculating the consideration paid by the student athlete to the athlete agent and any other consideration paid to the athlete agent from any source under the contract; (b) the name of any person not listed in the athlete agent license application who receives compensation from the agent contract; (c) a description of any expenses the student athlete agrees to reimburse; and (d) a description of the services to be provided to the student athlete; (e) the duration of the contract; and (f) the date of execution.

It abbreviates the mandatory “warning to student-athlete” message to be placed in contracts. However, the contract must include notice of: 1) potential eligibility loss, 2) the 72-hour notice requirement and 3) the 14-day notice of rescission. There is no requirement to include a warning to the student athlete of potential exposure to criminal and civil liability. It modifies the requirements for disclosure within athlete agent contracts. The warning of the potential for criminal prosecution of an athlete agent is removed. Although it retains the current 72-hour notice requirement, it eliminates the option of providing the notice to the college or university professor in lieu of the athletic director. The athlete agent must provide notice of the contract “in a record” to the athletic director. The student athlete, if enrolled must also “inform” the athletic director of the contract. The period for rescinding an athlete agent contract is reduced from 15 days to 14 days from the date of execution.

Additionally, it provides student athletes with additional rights. 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. This section requires that the athlete agent provide the student athlete with a record of the contract.

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

Section 5 creates subsection (4) of s. 468.4615, F.S. to provide for additional grounds for 2nd degree felony offenses as follows:

- (a) The athlete agent is prohibited from doing the following to induce a student athlete to enter a contract:
 1. Give any false or misleading information or making a materially false promise;
 2. Furnish anything of value to the student athlete prior to entering the contract; and
 3. Furnish anything of value to any individual other than the student athlete or another athlete agent.
- (b) The athlete agent may not intentionally:
 1. Initiate contact with a student unless licensed;
 2. Refuse to retain records or permit inspection of their records by the department;
 3. Provide false or misleading information in an application for licensure;
 4. Predate or postdate a contract;
 5. Fail to give notice of the existence of an agent contract as required by section 468.454(6), F.S.; and
 6. 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 s. 468.4562, F.S., to expand civil remedies for educational institutions. These institutions are now deemed to suffer damages if they self-impose reasonable disciplinary action for the purpose of mitigating *potential* sanctions to be imposed by an athletic organization or conference such as the NCAA. It is unclear what would constitute reasonably self-imposed disciplinary action given that the pre-emptive or negotiated actions taken by an institution are done to avoid or mitigate the full scope of formal or potential sanctions. Therefore, this provision appears to allow for recovery even if the institution is not ultimately formally sanctioned or penalized. An athlete agent and the former student athlete are to be held severally liable rather than jointly for damages sought by an educational institution resulting from violations under the athlete agent laws. An educational institution's right of action does not accrue until the educational institution discovers, or by exercise of reasonable diligence, would have discovered the violation. Finally, the bill provides that this part does not restrict the rights, remedies, or defenses of any person under law or equity.

Section 7 amends s. 468.4565, F.S., to remove the reference to licensure, to extend the records retention period from four to five years, and to specify the minimum content of those business records.

Section 8 repeals s. 468.4563, F.S., relating to continuing education requirements for athlete agents and s. 468.4564, F.S., relating to licensure display requirements.

Section 9 provides that the bill takes effect July 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Constitutional Issues:

The bill makes a distinction between independent athlete agents and individuals acting solely on behalf of a professional sports team or organization. Business solicitation has been recognized as a constitutionally protected commercial speech or expression. *See Edenfield v. Fane*, 113 S.Ct. 1792 (1993); *See Dept of Business & Professional Regulation v. Rampell*, 621 So.2d 426 (Fla. 1993). The rationale is that it affords consumers the opportunity to receive full benefits of a free and open market. The bill essentially creates a statutory exemption for athlete agents associated with a professional

sports team or organization. The Legislature has a wide discretion in creating statutory classifications for which there is a presumption in favor of validity. *Grant v. State*, 770 So.2d 655, 660 (Fla. 2000), citing to *State v. Leicht*, 402 So.2d 1153, 1154 (Fla.1981) (citations omitted). However, a statutory classification will be deemed to violate equal protection if it causes "different treatments so disparate as relates to the difference in classification so as to be wholly arbitrary." *Id.* Since no suspect class is involved, the regulation must be shown to be rationally related to a valid governmental purpose or interest and be reasonably designed to achieve that purpose. It is unknown whether student athletes are less susceptible to unscrupulous activities by these professional sports agents, and whether these professional sports agents are already subject to similar contractual restrictions, notice requirements and sanctions by virtue of their association with the professional sports team or organization.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Due to the elimination of the examination and associated fee, revenue collected by the Department of Business and Professional Regulation will decrease. This decrease may be offset by the elimination of the time and expense for administration of the exam.

B. Private Sector Impact:

Athlete agents will have fewer restrictions and expenses in obtaining licensure. However, athlete agents will also be held to higher record keeping standards. In addition, athlete agents will now be held severally liable for damages in actions brought by educational institutions. The more stringent administrative fines, expanded civil remedies and broader criminal sanctions against athlete agents may reduce the number of violations and the number of illegal interactions between athlete agents and student athletes. The bill exposes all employees and other persons acting on behalf of an athlete agent to the same criminal and civil liabilities as the athlete agent.

Student athletes will benefit from greater protections and expanded rights such as the right to retain consideration when the contracts are rescinded. Former student athletes, however, could potentially be severally liable for significant damages to educational institutions resulting from violations of the athlete agent laws. Student athletes, however, may still be unaware of the potential for civil and criminal liability for actions associated with sports contracts because the contracts do not need to contain provisions relating to this matter.

Educational institutions are also afforded greater protection through enhanced civil penalties and remedies against athlete agents and student athletes.

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:

None.

VII. Related Issues:

- Section 468.454, F.S., requires the athlete agent to provide 72-hour notice “in a record” of the existence of a contract. It is unclear what would constitute sufficient record. Similarly, the student athlete is required to “inform” the university or college athletic director but it is left unclear as to how such notice must be given, i.e., in writing or orally.
- A conflict exists between s. 468.453, F.S. as amended and s. 468.4561, F.S. Section 458.453, F.S., provides two scenarios under which an individual may act legally as an athlete agent although not yet officially licensed. First, an unlicensed individual may act as an athlete agent if a student athlete or someone on his or her behalf contacts the unlicensed individual. However, that unlicensed individual must submit a license application within 7 days of that initial contact by the student athlete or someone on her or his behalf. Second, an applicant for licensure as an athlete agent may obtain a temporary license from the Department of Business and Professional Regulation pending final approval or disapproval of a licensure application. No time frame is offered for how long the application may be pending. However, under existing s. 468.4561, F.S., such persons could potentially be subject to third degree felony offenses during those time frames which absolutely prohibits any person from conducting business as an athlete agent unless he or she holds an active license.

VIII. Amendments:

None.