

By Senator King

8-200-02

1 A bill to be entitled
2 An act relating to athlete agents; amending s.
3 468.452, F.S.; redefining the term "athlete
4 agent"; amending s. 468.453, F.S.; revising
5 licensure requirements; providing for service
6 of process on nonresident agents; providing for
7 temporary licenses; amending s. 468.454, F.S.;
8 revising contract requirements; providing for
9 cancellation of contracts; amending s. 468.456,
10 F.S.; providing for increased administrative
11 fines; amending s. 468.45615, F.S.; providing
12 additional criminal penalties for certain acts;
13 amending s. 468.4562, F.S.; revising provisions
14 relating to civil remedies available to
15 colleges and universities for violations of
16 athlete agent regulations; amending s.
17 468.4565, F.S.; revising business record
18 requirements; repealing s. 468.4563, F.S.,
19 relating to authority to require continuing
20 education by athlete agents; repealing s.
21 468.4564, relating to license display
22 requirements; providing an effective date.

24 Be It Enacted by the Legislature of the State of Florida:

26 Section 1. Subsection (2) of section 468.452, Florida
27 Statutes, is amended to read:

28 468.452 Definitions.--For purposes of this part, the
29 term:

30 (2) "Athlete agent" means a person who, directly or
31 indirectly, recruits or solicits a student athlete to enter

1 into an agent contract, or who, for any type of financial
2 gain, procures, offers, promises, or attempts to obtain
3 employment or promotional fees or benefits for a student
4 athlete with a professional sports team or as a professional
5 athlete, or with any promoter who markets or attempts to
6 market the student athlete's athletic ability or athletic
7 reputation. This term includes all employees and other persons
8 acting on behalf of an athlete agent who participate in the
9 activities included under this subsection. The term does not
10 include a spouse, parent, sibling, grandparent, or guardian of
11 the student-athlete or an individual acting solely on behalf
12 of a professional sports team or professional sports
13 organization.

14 Section 2. Section 468.453, Florida Statutes, is
15 amended to read:

16 468.453 Licensure required; qualifications;
17 examination; bond; exception; license nontransferable.--

18 (1) Any person who practices as an athlete agent in
19 this state must be licensed pursuant to this part.

20 (2) A person shall be licensed as an athlete agent if
21 the applicant:

22 (a) Is at least 18 years of age.

23 (b) Is of good moral character.

24 ~~(c) Passes an examination provided by the department~~
25 ~~which tests the applicant's proficiency to practice as an~~
26 ~~athlete agent, including, but not limited to, knowledge of the~~
27 ~~laws and rules of this state relating to athlete agents, this~~
28 ~~part, and chapter 455.~~

29 (c)(d) Has completed the application form and remitted
30 an application fee not to exceed \$500, ~~an examination fee not~~
31 ~~to exceed the actual cost for the examination plus \$500,an~~

1 active licensure fee not to exceed \$2,000, and all other
2 applicable fees provided for in this part or in chapter 455.

3 (d)~~(e)~~ Has submitted to the department a fingerprint
4 card for a criminal history records check. The fingerprint
5 card shall be forwarded to the Division of Criminal Justice
6 Information Systems within the Department of Law Enforcement
7 for purposes of processing the fingerprint card to determine
8 if the applicant has a criminal history record. The
9 fingerprint card shall also be forwarded to the Federal Bureau
10 of Investigation for purposes of processing the fingerprint
11 card to determine if the applicant has a criminal history
12 record. The information obtained by the processing of the
13 fingerprint card by the Florida Department of Law Enforcement
14 and the Federal Bureau of Investigation shall be sent to the
15 department for the purpose of determining if the applicant is
16 statutorily qualified for licensure.

17 (e)~~(f)~~ Has not in any jurisdiction, within the
18 preceding 5 years, been convicted or found guilty of or
19 entered a plea of nolo contendere for, regardless of
20 adjudication, a crime which relates to the applicant's
21 practice or ability to practice as an athlete agent.

22 ~~(g) Has posted with the department a \$15,000 surety
23 bond issued by an insurance company authorized to do business
24 in this state. The bond shall be in favor of the State of
25 Florida, Department of Business and Professional Regulation,
26 for the use and benefit of any student athlete or college or
27 university within Florida who or which is injured or damaged,
28 including reasonable costs and attorney's fees, as a result of
29 acts or omissions by the athlete agent pursuant to a license
30 issued under this part. The bond shall be written in the form
31 determined by the department. The bond shall provide that the~~

1 ~~athlete agent is responsible for the acts or omissions of any~~
2 ~~representatives acting under the athlete agent's supervision~~
3 ~~or authority. The bond shall be in effect for and cover all~~
4 ~~times that the athlete agent has an active license and~~
5 ~~conducts business pursuant to that license in this or any~~
6 ~~other state.~~

7 (3) An unlicensed individual may act as an athlete
8 agent if:

9 (a) A student-athlete or person acting on the
10 athlete's behalf initiates communication with the individual;
11 and

12 (b) Within 7 days after an initial act as an athlete
13 agent, the individual submits an application for licensure.

14 ~~Members of The Florida Bar are exempt from the state laws and~~
15 ~~rules component, and the fee for such, of the examination~~
16 ~~required by this section.~~

17 (4) A license issued to an athlete agent is not
18 transferable.

19 (5) By acting as an athlete agent in this state, a
20 nonresident individual appoints the department as the
21 individual's agent for service of process in any civil action
22 related to the individual's acting as an athlete agent.

23 (6) The department may issue a temporary license while
24 an application for licensure is pending. If the department
25 issues a notice of intent to deny the license application, the
26 initial temporary license expires and may not be extended
27 during any proceeding or administrative or judicial review.

28 (7)(a) An individual who has submitted an application
29 and holds a certificate, registration, or license as an
30 athlete agent in another state may submit a copy of the
31 application and certificate, registration, or license from the

1 other state in lieu of submitting an application in the form
2 prescribed pursuant to this section. The department must
3 accept the application and the certificate from the other
4 state as an application for registration in this state if the
5 application in the other state:

6 1. Was submitted in the other state within 6 months
7 next preceding the submission of the application in this state
8 and the applicant certifies that the information contained in
9 the application is current;

10 2. Contains information substantially similar to or
11 more comprehensive than that required in an application
12 submitted in this state; and

13 3. Was signed by the applicant under penalty of
14 perjury.

15 (b) An applicant applying under this subsection must
16 meet all other requirements for licensure as provided by this
17 part.

18 Section 3. Section 468.454, Florida Statutes, is
19 amended to read:

20 468.454 Contracts.--

21 (1) An agent contract must be in a record, signed, or
22 otherwise authenticated by the parties.

23 (2) An agent contract must state:

24 (a) The amount and method of calculating the
25 consideration to be paid by the student-athlete for services
26 to be provided by the athlete agent and any other
27 consideration the agent has received or will receive from any
28 other source under the contract;

29 (b) The name of any person not listed in the licensure
30 application who will be compensated because the
31 student-athlete signed the agent contract;

1 (c) A description of any expenses that the
2 student-athlete agrees to reimburse;

3 (d) A description of the services to be provided to
4 the student-athlete;

5 (e) The duration of the contract; and

6 (f) The date of execution.

7 (3) An agent contract must contain, in close proximity
8 to the signature of the student-athlete, a conspicuous notice
9 in boldface type in capital letters stating:

10
11 WARNING TO STUDENT-ATHLETE

12
13 IF YOU SIGN THE CONTRACT:

14 1. YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS
15 A STUDENT-ATHLETE IN YOUR SPORT;

16 2. IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72
17 HOURS AFTER ENTERING INTO THE CONTRACT, YOU AND
18 YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC
19 DIRECTOR; AND

20 3. YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS
21 AFTER SIGNING IT. HOWEVER, CANCELLATION OF THIS
22 CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.

23
24 (4) An agent contract that does not conform to this
25 section is voidable by the student-athlete. If a
26 student-athlete voids an agent contract, the student-athlete
27 is not required to pay any consideration or return any
28 consideration received from the athlete agent to induce the
29 student-athlete to enter into the contract.

1 (5) The athlete agent shall give a record of the
2 signed or authenticated agent contract to the student-athlete
3 at the time of execution.

4 (6) Within 72 hours after entering into an agent
5 contract or before the next scheduled athletic event in which
6 the student-athlete may participate, whichever occurs first,
7 the athlete agent must give notice in a record of the
8 existence of the contract to the athletic director of the
9 educational institution at which the student-athlete is
10 enrolled or the athlete agent has reasonable grounds to
11 believe the student-athlete intends to enroll.

12 (7) Within 72 hours after entering into an agent
13 contract or before the next athletic event in which the
14 student-athlete may participate, whichever occurs first, the
15 student-athlete must inform the athletic director of the
16 educational institution at which the student-athlete is
17 enrolled that he or she has entered into an agent contract.

18 (8) A student-athlete may cancel an agent contract by
19 giving notice of the cancellation to the athlete agent in a
20 record within 14 days after the contract is signed.

21 (9) A student-athlete may not waive the right to
22 cancel an agent contract.

23 (10) If a student-athlete cancels an agent contract,
24 the student-athlete is not required to pay any consideration
25 or return any consideration received from the athlete agent to
26 induce the student-athlete to enter into the contract.

27 ~~(1) An athlete agent and a student athlete who enter~~
28 ~~into an agent contract must provide written notice of the~~
29 ~~contract to the athletic director or the president of the~~
30 ~~college or university in which the student athlete is~~
31 ~~enrolled. The athlete agent and the student must give the~~

1 ~~notice before the contracting student athlete practices or~~
2 ~~participates in any intercollegiate athletic event or within~~
3 ~~72 hours after entering into said contract, whichever comes~~
4 ~~first. Failure of the athlete agent to provide this~~
5 ~~notification is a felony of the third degree, punishable as~~
6 ~~provided in ss. 775.082, 775.083, 775.084, 775.089, and~~
7 ~~775.091.~~

8 ~~(2) A written contract between a student athlete and~~
9 ~~an athlete agent must state the fees and percentages to be~~
10 ~~paid by the student athlete to the agent and must have a~~
11 ~~notice printed near the student athlete's signature containing~~
12 ~~the following statement in 10-point boldfaced type:~~

13 ~~"WARNING TO THE STUDENT ATHLETE: WHEN YOU SIGN THIS~~
14 ~~CONTRACT, YOU WILL LIKELY IMMEDIATELY LOSE YOUR ELIGIBILITY TO~~
15 ~~COMPETE IN INTERCOLLEGIATE ATHLETICS. TO AVOID CRIMINAL~~
16 ~~PROSECUTION YOU MUST GIVE WRITTEN NOTICE THAT YOU HAVE ENTERED~~
17 ~~INTO THIS CONTRACT TO THE ATHLETIC DIRECTOR OR PRESIDENT OF~~
18 ~~YOUR COLLEGE OR UNIVERSITY WITHIN 72 HOURS AFTER ENTERING INTO~~
19 ~~THIS CONTRACT OR PRIOR TO PARTICIPATING IN INTERCOLLEGIATE~~
20 ~~ATHLETICS, WHICHEVER COMES FIRST. FAILURE TO PROVIDE THIS~~
21 ~~NOTICE IS A CRIMINAL OFFENSE. DO NOT SIGN THIS CONTRACT UNTIL~~
22 ~~YOU HAVE READ IT AND FILLED IN ANY BLANK SPACES. YOU MAY~~
23 ~~CANCEL THIS CONTRACT BY NOTIFYING THE ATHLETE AGENT IN WRITING~~
24 ~~OF YOUR DESIRE TO CANCEL NOT LATER THAN THE 15TH DAY AFTER THE~~
25 ~~DATE YOU SIGN THIS CONTRACT. HOWEVER, EVEN IF YOU CANCEL THIS~~
26 ~~CONTRACT, THE INTERCOLLEGIATE ATHLETIC ASSOCIATION OR~~
27 ~~CONFERENCE TO WHICH YOUR COLLEGE OR UNIVERSITY BELONGS MAY NOT~~
28 ~~RESTORE YOUR ELIGIBILITY TO PARTICIPATE IN INTERCOLLEGIATE~~
29 ~~ATHLETICS."~~

30 ~~(3) An agent contract which does not meet the~~
31 ~~requirements of this section is void and unenforceable.~~

1 ~~(4) Within 15 days after the date the athletic~~
2 ~~director or president of the college or university of the~~
3 ~~student athlete receives the notice required by this section~~
4 ~~that a student athlete has entered into an athlete agent~~
5 ~~contract, the student athlete shall have the right to rescind~~
6 ~~the contract with the athlete agent by giving written notice~~
7 ~~to the athlete agent of the student athlete's rescission of~~
8 ~~the contract. The student athlete may not under any~~
9 ~~circumstances waive the student athlete's right to rescind the~~
10 ~~agent contract.~~

11 ~~(5) A postdated agent contract is void and~~
12 ~~unenforceable.~~

13 (11)~~(6)~~ An athlete agent shall not enter into an agent
14 contract that purports to or takes effect at a future time
15 after the student athlete no longer has remaining eligibility
16 to participate in intercollegiate athletics. Such a contract
17 is void and unenforceable.

18 (12)~~(7)~~ An agent contract between a student athlete
19 and a person not licensed under this part is void and
20 unenforceable.

21 Section 4. Subsection (3) of section 468.456, Florida
22 Statutes, is amended to read:

23 468.456 Prohibited acts.--

24 (3) When the department finds any person guilty of any
25 of the prohibited acts set forth in subsection (1), the
26 department may enter an order imposing one or more of the
27 penalties provided for in s. 455.227, and an administrative
28 fine not to exceed \$25,000 for each separate offense. In
29 addition to any other penalties or disciplinary actions
30 provided for in this part, the department shall suspend or
31 revoke the license of any athlete agent licensed under this

1 part who violates paragraph (1)(f) or paragraph (1)(o) or s.
2 468.45615.

3 Section 5. Subsection (4) is added to section
4 468.45615, Florida Statutes, to read:

5 468.45615 Provision of illegal inducements to athletes
6 prohibited; penalties; license suspension.--

7 (4)(a) An athlete agent, with the intent to induce a
8 student-athlete to enter into an agent contract, may not:

9 1. Give any materially false or misleading information
10 or make a materially false promise or representation;

11 2. Furnish anything of value to a student-athlete
12 before the student-athlete enters into the agent contract; or

13 3. Furnish anything of value to any individual other
14 than the student-athlete or another athlete agent.

15 (b) An athlete agent may not intentionally:

16 1. Initiate contact with a student-athlete unless
17 licensed under this part;

18 2. Refuse or fail to retain or permit inspection of
19 the records required to be retained by s. 468.4565;

20 3. Provide materially false or misleading information
21 in an application for licensure;

22 4. Predate or postdate an agent contract;

23 5. Fail to give notice of the existence of an agent
24 contract as required by s. 468.454(6); or

25 6. Fail to notify a student-athlete before the
26 student-athlete signs or otherwise authenticates an agent
27 contract for a sport that the signing or authentication may
28 make the student-athlete ineligible to participate as a
29 student-athlete in that sport.

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1 (c) An athlete agent who violates this subsection
2 commits a felony of the second degree, punishable as provided
3 in s. 775.082, s. 775.083, or s. 775.084.

4 Section 6. Section 468.4562, Florida Statutes, is
5 amended to read:

6 468.4562 Civil action by institution.--

7 (1) A college or university may sue for damages, as
8 provided by this section, any person who violates this part.
9 A college or university may seek equitable relief to prevent
10 or minimize harm arising from acts or omissions which are or
11 would be a violation of this part.

12 (2) For purposes of this section, a college or
13 university is damaged if, because of activities of the person,
14 the college or university is penalized,or is disqualified, or
15 suspended from participation in intercollegiate athletics by a
16 national association for the promotion and regulation of
17 intercollegiate athletics,or by an intercollegiate athletic
18 conference, or by reasonable self-imposed disciplinary action
19 taken to mitigate sanctions likely to be imposed by such
20 organization and, because of that penalty, disqualification,
21 ~~or~~ suspension, or action the institution:

22 (a) Loses revenue from media coverage of a sports
23 contest;

24 (b) Loses the right to grant an athletic scholarship;

25 (c) Loses the right to recruit an athlete;

26 (d) Is prohibited from participating in postseason
27 athletic competition;

28 (e) Forfeits an athletic contest; or

29 (f) Otherwise suffers an adverse financial impact.

30 (3) An institution that prevails in a suit brought
31 under this section may recover:

- 1 (a) Actual damages;
2 (b) Punitive damages;
3 (c) Treble damages;
4 (d) Court costs; and
5 (e) Reasonable attorney's fees.

6 (4) A right of action under this section does not
7 accrue until the educational institution discovers, or by the
8 exercise of reasonable diligence would have discovered, the
9 violation by the athlete agent or former student-athlete.

10 (5) Any liability of the athlete agent or the former
11 student-athlete under this section is several and not joint.

12 (6) This part does not restrict rights, remedies, or
13 defenses of any person under law or equity.

14 Section 7. Subsection (1) of section 468.4565, Florida
15 Statutes, is amended to read:

16 468.4565 Business records requirement.--

17 (1) An athlete agent ~~who holds an active license and~~
18 ~~engages in business as an athlete agent~~ shall establish and
19 maintain complete financial and business records. The athlete
20 agent shall save each entry into a financial or business
21 record for at least 5 ~~4~~ years from the date of entry. These
22 records must include:

23 (a) The name and address of each individual
24 represented by the athlete agent;

25 (b) Any agent contract entered into by the athlete
26 agent; and

27 (c) Any direct costs incurred by the athlete agent in
28 the recruitment or solicitation of a student-athlete to enter
29 into an agent contract.

30 Section 8. Sections 468.4563 and 468.4564, Florida
31 Statutes, are repealed.

1 Section 9. This act shall take effect July 1, 2002.

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SENATE SUMMARY

Substantially revises part IX of ch. 468, F.S., relating to the regulation of athlete agents. Redefines the term "athlete agent" and revises the licensing procedures. Provides for the licensure of certain persons who are licensed in other jurisdictions. Revises mandated contract provisions and provides for administrative fines. Prohibits specified illegal inducements and creates a cause of action for certain institutions damaged by the actions of licensees. Establishes business recordkeeping requirements and repeals provisions relating to continuing education and display of licenses. (See bill for details.)