

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/CS/SB 1788

SPONSOR: Criminal Justice Committee, Education Committee and Senator Hill

SUBJECT: Corruption of Student Athletes

DATE: April 23, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dormady</u>	<u>O'Farrell</u>	<u>ED</u>	<u>Fav/CS</u>
2.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for CS/SB 1788 creates a new section that provides that it is a second degree misdemeanor for a person who, knowing a person is a student athlete, to give or offer anything of monetary value to that student athlete or to another person with the intent of encouraging that student athlete to attend a particular academic institution, become a professional athlete, or endorse a product or commercial establishment. The bill defines “student athlete” as a student in grades 6-12 who participates in interscholastic athletic contests as a representative of the school the student athlete attends and who resides in this state.

The CS provides exceptions from this section for the following: certain scholarship offers or provisions of items and expenses by academic institutions; certain offers of employment by a professional sports team or organization; certain gifts from a spouse, family member, or relative; and certain endorsements.

This CS creates s. 877.135, F.S.

II. Present Situation:

Currently, when student athletes accept offers of merchandise, money or other inducements from persons and that transaction becomes known, the student athlete sacrifices his or her amateur status, sometimes to the great detriment of the student’s athletic development, education and career. The persons offering such inducements, however, who are generally themselves adults, often suffer no consequences of such actions in law, although they may suffer consequences pursuant to the rules of amateur athletics and educational institutions, as noted below, or civil penalties. If they are athletic agents, they may also be subject to criminal penalties for some types of behavior, as described herein.

Rules governing amateur status

Under the bylaws of the Florida High School Activities Association (FHSAA), in order to participate in high school athletics in the state, a student must be an amateur athlete. According to FHSAA bylaw 11.9, this means that a student must not accept any payment, gift or donation for participating in a sport, or use a name other than their own name when participating.¹ Violation of these provisions results in ineligibility to participate in a high school sport for one year.

The National Collegiate Athletic Association (NCAA) also maintains detailed guidelines for maintaining amateur status, which impact high school student athletes who plan to play sports in college.² These requirements preclude student athletes who wish to maintain amateur status from taking a number of actions, including (among other restrictions) accepting inducements of the sort contemplated by SB 1788. Once found ineligible to participate in collegiate athletics, under NCAA rules student athletes are generally barred permanently, unless they participate in an eligibility reinstatement process, which generally must be initiated by the college or university that they attend.

Art. 12.1 of the NCAA By-Laws appears to prohibit an athlete from using his or her athletic skill in a commercial for which he or she is compensated which are related to the athlete's status as an athlete.

¹ Section 11.9, the applicable section of the Bylaws of the Florida High School Activities Association, Inc., provides in part:

11.9 AMATEURISM

11.9.1 A student may not participate in an athletic activity of this Association unless he/she is an amateur. A student who has accepted remuneration, gift, or donation for participation in a sport or participates under an assumed name becomes a professional and is thereafter disqualified for further participation in that sport in high school for a period of one year. Reference to "gift or donation" is not intended to preclude the acceptance of medals, trophies, plaques, keys, pins, or ribbons of small intrinsic value, if presented by the sponsoring organization. Championship rings, sweaters, jackets or award blankets may be accepted by students provided they are presented by the school which they represent.

² The NCAA's "Guide for the College Bound Student Athlete" details some restrictions for high school athletes to follow in order to maintain amateur status and eligibility to play college sports. Following is a relevant excerpt of the NCAA's guide:

Don't lose your college eligibility by becoming a professional. You are a "professional" if you:

- Are paid (in any form) or accept the promise of pay for playing in an athletics contest;
- Sign a contract or verbally commit with an agent or a professional sports organization;
- Ask that your name be placed on a draft list [Note: In basketball, once you become a student-athlete at an NCAA school, you may enter a professional league's draft one time without jeopardizing your eligibility provided you are not drafted by any team in that league and you declare your intention in writing to return to college within 30 days after the draft];
- Use your athletics skill for pay in any form (for example, TV commercials, demonstrations);
- Play on a professional athletics team; or
- Participate on an amateur sports team and receive any salary, incentive payment, award, gratuity, educational expenses or expense allowances (other than playing apparel, equipment and actual and necessary travel, and room and board expenses).

Existing penalties for offering inducements to athletes

Section 468.45615, F.S., provides that it is a second degree felony to violate s. 468.456(1)(f), F.S., which proscribes “offering anything of value to any person to induce a student athlete to enter into an agreement by which the agent will represent the student athlete.” The prohibition applies only to interactions with student athletes who have informed a college or university of their intent to participate in that school’s intercollegiate athletics, which will generally include only seniors in high school. Section 468.45615, F.S., also proscribes inducing a student athlete to enter into an agency agreement.

Other than the penalties provided by ss. 468.456 and 468.45615, F.S., there are currently no criminal penalties in Florida associated with giving gifts or other enticements to student athletes under circumstances that would jeopardize the athlete’s amateur status. Athletic agents, who are required to be licensed by the state, may be assessed certain administrative penalties for misconduct. Additionally, s. 468.4562, F.S., provides a statutory right of action for colleges and universities to sue any person – not just agents -- who violates any of the restrictions of the part, including the following ground for disciplinary action in s. 468.456(1)(k), F.S.: “[v]iolating or aiding and abetting another person to violate the rules of the athletic conference or collegiate athletic association governing a student athlete or student athlete’s college or university.”

III. Effect of Proposed Changes:

As previously noted, when student athletes accept offers of merchandise, money or other inducements from persons, the student athlete often sacrifices his or her amateur status, while the persons offering these inducements to the student athlete may suffer no consequences from their actions.

Committee Substitute for CS/SB 1788 creates s. 877.135, F.S., which provides that it is a second degree misdemeanor for a person who, knowing a person is a student athlete, to give or offer anything of monetary value to that student athlete or to another person with the intent of encouraging that student athlete to attend a particular academic institution, become a professional athlete, or endorse a product or commercial establishment. The bill defines “student athlete” as a student in grades 6-12 who participates in interscholastic athletic contests as a representative of the school the student athlete attends and who resides in this state.

The CS provides exceptions from this section for the following:

- A written statement by an academic institution to a student athlete in which the student athlete is offered a scholarship or the provision of items and expenses specifically permitted under the rules and regulations governing the recruitment of athletes by the academic institution.
- A written statement by a professional sports team or organization to a student athlete in which the student athlete is offered employment with the team or organization, if that written statement also includes a written statement specifying any limitation which the acceptance of such offer will place on the amateur career of the student athlete.

- An item of monetary value that is given to the student athlete by a spouse, parent, sibling, grandparent, or legal guardian of such student athlete, unless such item was given to the spouse, parent, sibling, grandparent, or legal guardian by a person in violation of this section.
- An endorsement of a product or commercial establishment by a student athlete, if the student athlete is not paid or compensated for the endorsement.
- An endorsement of a product or commercial establishment by a student athlete in which a person who is a student athlete is compensated or paid for the endorsement, if the endorsement does not identify the person who is a student athlete as a student athlete through any direct or indirect means and does not depict, describe, or display such person's athletic ability as it relates to the sport in which such person participates as a student athlete.

The second degree misdemeanor offense is punishable as provided in s. 775.082, F.S. (by imprisonment for up to 60 days) or by a fine not to exceed the larger of \$1,000 or three times the value of the inducement given or offered.

The CS takes effect July 1, 2003.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Under the CS, it is a second degree misdemeanor for a person who, knowing a person is a student athlete, to give or offer anything of monetary value to that student athlete or to another person with the intent of encouraging that student athlete to attend a particular academic institution, become a professional athlete, or endorse a product or commercial establishment. Because the conduct being regulated here – giving or offering inducement for a particular purpose – is effected by communication, the CS must be analyzed under the U.S. Constitution's First Amendment protection of freedom of speech or expression. First Amendment restrictions apply to the State of Florida by incorporation from the Fourteenth Amendment to the U.S. Constitution.

Because the harm that would result from a defendant's inducement results solely from the content of his or her communication, the CS contains a content-based restriction on freedom of speech, and a court applying a First Amendment analysis to the CS may apply

a strict scrutiny test. However, if the speech regulated in this CS could be established as commercial speech, then a court's standard for reviewing it in the event of a constitutional challenge would be more relaxed. Arguably, the CS regulates commercial speech because of both the transactional nature of the conduct being governed (an item of monetary value in exchange for desired behavior) and also because the inducement is likely to be offered – and accepted – pursuant to an economic interest or commercial motive.

Generally, commercial speech may be regulated, and it is not entitled to any protection at all if it is found to be misleading or deceptive. If speech has even the potential to mislead, then it may be regulated.³ However, communication regulated by CS/SB 1788 could be presented in either a misleading or a non-misleading way (e.g., the inducement could be offered either with an assurance that no harm will result from taking it or with a disclosure that, if made public, it could jeopardize the student's amateur status).

If the speech is entitled to the standard protections afforded non-deceptive commercial speech, the state would have to show that the regulation directly advances a substantial government interest in a way that is reasonably tailored to achieve its objective.⁴

The Florida Constitution also protects freedom of speech under Article I, §4. Under Florida case law, the scope of the Florida Constitution's protection of freedom of speech is the same as that of the First Amendment of the U.S. Constitution.⁵ Accordingly, Florida courts apply the principles of freedom of speech as set forth in federal case law⁶, as previously described.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This CS should have an insignificant impact. The maximum penalty for a second degree misdemeanor is 60 days in jail.

VI. Technical Deficiencies:

None.

³ *In re R.M.J.*, 455, U.S. 191 (1982).

⁴ *Central Hudson Gas v. Public Service Commission*, 447 U.S. 557 (1980).

⁵ See *University Books and Videos, Inc. v. Metropolitan Dade County*, 78 F. Supp. 2d 1327 (S.D.Fla. 1999); *Florida Canners Ass'n v. State, Dept. of Citrus*, 371 So.2d 503 (Fla. 2d DCA 1979).

⁶ *Café Erotica v. Florida Dept. of Transp.*, 830 So.2d 181 (Fla. 1st DCA 2002).

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
