

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 2468

SPONSOR: Judiciary and Regulated Industries Committees and Senator King

SUBJECT: Athletic Agents

DATE: April 25, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wimsett</u>	<u>Guthrie</u>	<u>RI</u>	<u>Favorable/CS</u>
2.	<u>Gomez</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/1 amendment</u>
3.	<u>Matthews</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable/CS</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill enhances the criminal, civil and administrative sanctions of the athlete agent laws in Part IX of chapter 468, F.S., by:

- ▶ Creating another ground for disciplinary action based on one's employment for the purpose of illegal recruitment or solicitation by a person convicted of a specified offense.
- ▶ Making it a second degree felony offense for a person to illegally induce a student athlete to enter into an athlete agency agreement,
- ▶ Making it a second degree felony offense for a person who has been previously convicted or who has pled to illegal inducement, to employ, use, or collaborate with a licensed or unlicensed agent to illegally recruit or solicit student athletes,
- ▶ Making it a second degree felony offense for a person to illegally recruit or solicit a student athlete by knowingly assisting someone who has been convicted of or has pled to illegal inducement or to illegal recruitment or solicitation by employing, using or collaborating with a licensed or unlicensed agent, and
- ▶ Adding that colleges and universities that prevail in civil suits against athlete agent may recover treble damages in addition to the currently recoverable actual and punitive damages.

The bill amends s. 468.456, F.S., and 468.4562, F.S., and creates s. 468.45615, F.S.

II. Present Situation:

In 1988, the Legislature enacted law providing for the regulation of athlete agents by the Department of Business and Professional Regulation.¹ See chapter 88-229, L.O.F.; ch. 468, F.S.

¹Up until 1988, provisions within chapter 240, F.S., relating to post-secondary education, regulated the execution of contracts between athlete agents and student athletes, particularly those student athletes who were members of intercollegiate athletic associations. See former s. 240.5337, F.S. (1994). It also provided a civil cause of action for the university or the college against a person who caused the educational institute to incur damages as a result of sanctions imposed by the National Collegiate Athletic Association for violations of its specified NCAA rules governing student athletes. See former s. 240.5338, F.S. The NCAA is a

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 in Part IX of chapter 468, F.S., to impose stricter regulatory requirements governing athlete agents, and more particularly athlete contracts. *See* ch. 95-307, L.O.F. Specifically, it made the following changes:

◆ *Definitions*

It expanded the definitions for “agent contract,” “athlete agent,” and “student athlete.” 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 a professional athlete, or with any promoter who markets or attempts to market the student athlete’s athletic ability or reputation. *See* s. 468.452(2) 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. 468.52(5), F.S. The original definition for student athlete did not include a student athlete who had executed a “letter of intent.”

It added definitions for the terms “financial services,” and “participation.” The term “contact” was also added and defined as “communication between an athlete agent and a student athlete, by whatever means, directly or indirectly, for the purpose of entering or soliciting entry into an agent contract.” *See* s. 468.452(3), F.S.

◆ *Licensure*

It required the biennial licensing in lieu of the biennial registration of athlete agents by the Department of Business and Professional Regulation. Thus, any person who practices as an athlete agent must:

- ▶ Be at least 18 years of age;
- ▶ Be of good moral character;
- ▶ Complete and remit an application form with a fee not to exceed \$500 [currently set at \$500];
- ▶ Pay an examination fee based on the actual cost of the examination plus \$500 [examination fee is currently set at \$300];
- ▶ Pass an examination provided by the Department that tests, in part, the person’s knowledge of the laws and rules relating to athlete agents;

voluntary accrediting association consisting of more than 1,200 institutions, conferences, organizations and individuals who oversee, administer and enforce rules governing the eligibility of college student athletes and intercollegiate athletic programs in the NCAA.

- ▶ Pay an active licensure fee not to exceed \$2,000 [licensing fee is currently set at \$750 and renewal licensing fee is set at \$445], and all other applicable fees provided for in Part 9 of Chapter 468, F.S., and Part 1 of Chapter 455, F.S.;
- ▶ Submit a fingerprint card for a criminal history records check [\$39 fee];
- ▶ Have not been convicted, or found guilty of, or entered a plea of *nolo contendere* for, regardless of adjudication, a crime that relates to the applicant's practice or ability to practice as an athlete agent for the preceding five years in any jurisdiction; and
- ▶ Post with the Department a \$15,000 surety bond issued by an insurance company authorized to do business in this state. *See* s. 468.453(2), F.S.

Members of the Florida Bar are exempt from the examination and examination fee requirements. The exam consists of two parts: 1) a 60-minute test part consisting of 50 multiple-choice questions on Florida Laws and Rules and 2) 40-minute test part consisting of 30 multiple-choice questions on NCAA Bylaws and Articles.

◆ *Contract and disclosure requirements*

It revised provisions governing the effect and enforcement of contracts between student athletes and athlete agents.² The 72-hour notice provision which required that notice of the executed contract be provided to the school, was broadened to apply to all student athletes in lieu of student athletes whose schools are associated with a national intercollegiate program, association or conference. It provided for a 15-day, in lieu of a 10-day, rescission period for a contract executed by a student athlete. It eliminated the first degree misdemeanor offense against student athletes who failed to provide the requisite contract notice to the school, but retained the third degree felony offense against the athlete agent for failing to make such notice. However, the law still required the "warning to the student athlete" notice in the contract to state that the student athlete would be subject to criminal prosecution for failure to provide notice. It required the contract between the student athlete and the athlete agent to include the specific fee and percentage fee provisions.

◆ *Administrative penalties*

It expanded the grounds for disciplinary action, including the addition of the grounds for disciplinary actions under part I of chapter 455, F.S., by the Department of Business and Professional Regulation. 468.456, F.S. Prohibited acts by athlete agents include but are not limited to, any conduct that demonstrates bad faith or dishonesty, commingling money or property of another person with the athlete agent's money or property, or having unlawful contact with a student athlete. *See* s. 468.456(1), F.S. Specifically, subsection (1)(f) of section 468.456, F.S., prohibits a licensed athlete agent from offering anything of value to any person to induce a student athlete to enter into an agreement under which an athlete agent will represent the student athlete. Upon a finding of violation of one or more of these prohibited acts, DBPR may enter an order imposing penalties as provided in s. 455.227, F.S., including restrictions on practice, imposition of an administrative fee not to exceed \$5,000, issuance of a reprimand, suspension or revocation of license, and placement on probation.

◆ *Criminal Penalties*

²These provisions were originally based on provisions in chapter 240, F.S., relating to regulation of contracts with athlete agents. *See* s. 240.5337, F.S.

In addition to administrative penalties, several third degree felony offenses were added as follows:

- ▶ Failure by an athlete agent to notify the athletic director or the president of a college or university of the existence of an agent contract prior to the contracting student athlete's practice or participation in a intercollegiate athletic event or within 72 hours after the execution of the contract, whichever is earlier (see s. 468.454(1), F.S.)
- ▶ Conducting business as an unlicensed athlete agent (see s. 468.4561, F.S.)
- ▶ Knowingly aiding or abetting someone to conduct business as an unlicensed athlete agent. (s. 468.4561, F.S.)

These third degree felony offenses are punishable by a term of imprisonment up to 5 years (s. 775.082, F.S.), by a fine up to \$5,000 (s. 775.083, F.S.), by prosecution as a habitual felony offense (s. 775.084, F.S.), and by an order to complete public service (s. 775.091, F.S.).

◆ *Civil Liability*

It broadened the scope of civil liability against: 1) Athlete agents; 2) Persons who assisted the athlete agent; and 3) Student athletes. Damages may be sought in a civil action brought by a college or university based on violations of Part IX.³ See s. 468.4562, F.S. It broadened the scope of recoverable damages. With the revision, the school could recover not only actual damages, costs and attorney fees but it could also recover punitive damages. Actual damages would be based on whether the violations caused the school to be penalized, disqualified or suspended by national intercollegiate associations or a conference. Actual damages would be those that also resulted in a loss of revenue from media coverage, loss of scholarships, loss of the right to recruit student athletes, prohibition from participating in post-season athletic competition, forfeiture of athletic contests or other adverse financial impact.

III. Effect of Proposed Changes:

Section 1 amends s. 468.456, F.S., relating to grounds for disciplinary action by the Department of Business and Professional Regulation. Subsection (1) is amended to add a ground for disciplinary action against a person who is employed to illegally recruit or solicit athlete students through the use by or collaboration with a person who is known to have been convicted of or found guilty of, or to have pled nolo contendere to, a violation of 468.45615, F.S., relating to criminal offenses for illegal inducements to student athletes.⁴

³Section 240.5338, F.S. (1993), allowed a university or college to recover actual damages suffered as a result of penalties or sanctions including costs and attorneys' fees, imposed by the National Collegiate Athletic Association as arising from a person's intentional violation or inducement of another person to violate specified NCAA rules. In lieu of actual damages, the court could limit the school's damages to an amount equal to three full scholarships. Although this section was repealed in 1995, the right to recover damages in a civil cause of action by the university or college became the basis of section 468.4562, F.S.

⁴Pleas in criminal cases are governed by Rule 3.170, Fla. R. Crim. P. A plea of nolo contendere is essentially an agreement between an accused and the state under which the accused does not contest the charges. A plea of nolo contendere is typically used where an accused, though unwilling to confess guilt, does not wish to go to trial and desires the court to immediately impose sentence. Pleas of guilty and pleas of nolo contendere may be withdrawn or vacated under limited specified circumstances in which case the accused may be subsequently convicted or found guilty, or acquitted through a jury or non-jury trial. The adjudication or withholding of adjudication refers to the formal pronouncement or withholding of such pronouncement by the court that the person is guilty or not guilty. This may have implication for the person's criminal record and subsequent criminal charges, if any.

Subsection (3) is amended to direct DBPR to suspend or revoke the license of an athlete agent who violates the provisions of:

- ▶ Subsection (1)(f), relating to a ground for disciplinary action based on the illegal inducement of a student athlete into a contract,
- ▶ Subsection (1)(o), relating to a ground for disciplinary action based on a person's employment for purposes of illegally recruiting or soliciting student athletes, through use or collaboration with a person known to have been convicted, have been found guilty or have pled nolo contendere to specified violations under s. 468.45615, F.S., or
- ▶ Section 468.45615, F.S., relating to criminal prosecution for the illegal inducement of a student athlete into a contract.

Section 2 creates section 468.45615, F.S. and adds criminal felony offenses as follows:

- ▶ A person is strictly criminally liable for a second degree felony offense if he or she has violated s. 468.4561(1)(f), relating to a ground for disciplinary action based on the illegal inducement of a student athlete into a contract.
- ▶ A person commits a second degree felony offense if he or she has been criminally convicted of, found guilty of or has pled nolo contendere to, illegal inducement of a student athlete to enter into a contract (i.e., s. 468.4561(1)(f)) and he or she employs, uses or otherwise collaborates with a licensed or an unlicensed athlete agent for the purposes of illegally recruiting or soliciting a student athlete.
- ▶ A person commits a second degree felony offense if he or she knowingly actively assists, for the purposes of illegally recruiting or soliciting a student athlete, a person who has been criminally convicted of, found guilty of or has pled nolo contendere to, a violation of either of the other two enumerated offenses.

These second degree felony offenses are punishable by a statutory maximum of 15-years imprisonment (s. 775.082, F.S.), by a fine up to \$10,000 (s. 775.083, F.S.), by prosecution as a habitual felony offense with concomitant penalty and sentencing multipliers (s. 775.084, F.S.), or by an order to complete public service (s. 775.091, F.S.). In addition, the court is authorized to suspend the license of an athlete agent pending the outcome of an administrative action.

Section 3 amends s. 468.4562, F.S., relating to civil actions by colleges and universities against persons whose prohibited conduct under the athlete agent provisions cause the school to be penalized, disqualified or otherwise suspended from participation with a national athletic association or conference. In addition to seeking equitable relief and recovering actual damages, punitive damages, court costs and reasonable attorney fees, colleges and universities may now also recover treble damages against any such person, including the athlete agent, an aider and abettor, and the student athlete.

Section 4 provides the bill to take effect October 1, 2000.

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:

None.

B. Private Sector Impact:

This bill potentially effects all student athletes which includes those students who have executed letters of intent to participate athletically at a school and those students who have practiced or participated with the school's athletics. The increased restrictions and penalties may help to minimize those opportunities for athlete agents to interact illegally with student athletes. This may mitigate damages caused to the student athlete who unwittingly engages in activities and conduct that results in a loss of scholarship, loss of eligibility, premature entry into the professional ranks, and risk of civil liability arising from damages incurred by the school through sanctions imposed by the National Collegiate Athletic Association or other athletic conferences. It may also reduce the risk of damages incurred by the school which threatens the structure, integrity and financial support of university and college athletic programs.

However, this bill may also limit opportunities for student athletes who are qualified, who are legitimately ready, who aspire to enter the professional ranks or who are otherwise motivated or pressured by personal financial concerns or gains, to rely upon, or contact a variety of athlete agents directly or indirectly through trusted friends, associates or networking for purposes of accessing the professional athletic market..

This bill's more stringent criminal, civil and administrative sanctions under the laws regulating athlete agents may have a chillingly effect on the conduct or ability of licensed athlete agents to employ, use or otherwise collaborate with others, particularly those with prior criminal records for violations of the athlete agent law, for purposes of contacting or attempting to recruit or solicit student athletes The economic impact on athlete agents who are complying with the law in the state could be positive if illegal practices are curtailed by the provisions of the bill.

C. Government Sector Impact:

This bill creates second degree felony offenses. Estimates of fiscal impact are not available from the Criminal Justice Estimating Conference which is statutorily charged with reviewing the potential impact of newly created crimes on the state prison system.

It is indeterminate what impact, if any, there will be on the courts, law enforcement, and the state attorney's offices.

There were approximately 122 athlete agents licensed in Florida during the 1998-1999 year. Information regarding the number of licensed athlete agents, number of investigations, of past and pending disciplinary actions, and of licensure suspensions and revocations is still being compiled by the DBPR's Division of Talent Agents and Athlete Agents, and not available to date.

VI. Technical Deficiencies:

None.

VII. Related Issues:

- The bill creates a strict liability third degree felony offense based on the automatic violation of the disciplinary ground for illegally inducing a student athlete to enter into a contract. It does not require that the person be found administratively guilty before the person can be held criminally liable for the same offense.
- There is a defect in current law. Due to a legislative amendment in 1995, a student athlete is no longer subject to a first degree misdemeanor offense for failing to notify the school about his or her executed contract with an athlete agent. Perhaps to discourage student athletes from executing contracts with athlete agents, the law still requires a contract between a student athlete and the athlete agent to state its "warning to student athletes" that the student athlete could be subject to criminal prosecution for failure to provide notice even though in actuality the student athlete is only subject to civil liability. *See s. 468.454, F.S.*

VIII. Amendments:

None.