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**HOUSE OF REPRESENTATIVES
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS**

BILL #: CS/HB 179

RELATING TO: Athlete Agents

SPONSOR(S): Council for Smarter Government, Representative(s) Benson and Bense

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS REGULATION YEAS 9 NAYS 0
 - (2) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 6 NAYS 0
 - (3) COUNCIL FOR SMARTER GOVERNMENT YEAS 14 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING OR MODIFYING ANY LEGISLATION OR STATUTE.

The bill revises various regulatory provisions of part IX of chapter 468, F.S., governing athlete agents.

Among other provisions, the bill:

- 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;
- eliminates the licensure requirements for examination, payment of associated fees and bond;
- allows an unlicensed agent to practice under specified circumstances;
- provides for temporary licensure pending the application process under certain 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;
- expands the scope of recoverable damages by educational institutions 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 from four to five years;
- repeals continuing education and licensure display requirements; and
- creates second degree felony offenses for specified acts by an athlete agent.

The bill does not have a significant fiscal impact on state or local government.

The effective date of the bill is July1, 2002.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. PRESENT SITUATION:

Currently, athlete agents are regulated by the Department of Business and Professional Regulation (DBPR) under part IX of chapter 468, F.S. Chapter 88-229, Laws of Florida, first authorized state regulation of Athlete Agents. Previously, the regulation established in Part IX of chapter 468, F.S., was a biennial registration. Until October 1, 1995, the regulation essentially remained the same other than a technical change made in 1991 to the penalty section in the contract language and the exemption for members of the Florida Bar inserted by the 1993 Legislature. In 1995, several changes were made to the law to strengthen the regulatory provisions for protection of student athletes and universities and colleges. The registration of athlete agents was replaced with licensure requirements.

Among other requirements, applicants for licensure must: be at least eighteen years of age; be of good moral character and submit to a criminal records background check; pass an examination; post a \$15,000 surety bond, which must be renewed with each license renewal; and pay an application and examination fee.

The following statutory penalties are currently established for unlicensed activity: an administrative or civil fine greater than \$500 but less than \$5,000; notice to cease and desist; and a felony of the third degree. Administrative penalties for other violations include: \$5,000 fine for each count or separate offense, reprimand, probation, or restriction in scope of practice, and denial of certification for exam or licensure, or revocation of license. Civil remedies include authority for colleges and universities to sue for damages.

C. EFFECT OF PROPOSED CHANGES:

The bill revises various regulatory provisions of part IX of chapter 468, F.S., governing athlete agents. See section-by-section part of this analysis, below.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 468.452, F.S., relating to the definition of "athletic agent" to include 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 and repeals the current exemption from complying with licensure and qualifications requirements for members of the Florida Bar.

It also allows an unlicensed individual to act as an athlete agent if contact is first initiated by the student athlete or someone acting on the students' behalf and the unlicensed individual submits an application for licensure within 7 days of contact. For non-resident athlete agents, the DBPR is designated as the agent for receipt of service of process in any civil action related to the agent. The DBPR is authorized to issue a temporary registration while an application is pending.

The bill 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., to establish requirements for contracts between athlete agents and athletes. Requirements include establishing that contracts must: state or contain the amount and method of calculating the consideration to be paid by student-athlete for services to be provided by the athlete agent under the contract; any other consideration the athlete agent has received or will receive from any other source for entering into the contract or for providing the services; the name of any person not listed in the application for registration or renewal of registration who will be compensated because the student-athlete signed the agency contract; description of any expenses that the student-athlete agrees to reimburse; a description of the services to be provided to the student-athlete; the duration of the contract, and the date of the execution.

The bill establishes that contracts constructed pursuant to this act must contain in close proximity to the signature of the student-athlete, verbatim, a statutory warning notice, as stipulated, in this section.

The bill provides that a contract that does not conform to this section is voidable by the student-athlete. If a student-athlete voids a contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into a contract. The athletic agent is required to give a record of the signed contract to the student-athlete at the time of execution.

The bill establishes disclosure requirements for athlete agents and student-athletes. It stipulates that each shall, within 72 hours after entering into a contract or before the next scheduled athletic event in which the student-athlete may participate, whichever ever occurs first, give notice of the existence of the contract. The notice is required to be given to the athletic director of the educational institution at which the student-athlete is enrolled.

The bill establishes that a student-athlete may cancel a contract by giving notice of the cancellation within 14 days after the contract is signed and the student-athlete may not waive the right to cancel a contract. If a student-athlete cancels a contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

Section 4. Amends s. 468.456, F.S., relating to prohibited acts. Increases the administrative fine cap assessed by the DBPR from \$5,000 to \$25,000 for each offense.

Section 5. Amends s. 468.45615, F.S., to provide for additional grounds for 2nd degree felony offenses. The athlete agent is prohibited from doing the following to induce a student athlete to enter a contract: give any false or misleading information or making a materially false promise; furnish anything of value to the student athlete prior to entering the contract; and furnish anything of value to any individual other than the student athlete or another athlete agent.

The athlete agent may not intentionally: initiate contact with a student unless registered; refuse to retain or permit inspection of records; provide false or misleading information in an application; predate or postdate a contract; fail to give notice of the existence of an agent contract as required by section 468.454(6), F.S.; and fail to notify a student athlete prior to signing a contract that the student may become ineligible to participate in intercollegiate athletics.

Section 6. Amends s. 468.4562, F.S., to provide that institutions are deemed to suffer damages if they self-impose disciplinary action for the purpose of mitigating potential sanctions to be imposed by an athletic organization or conference such as the NCAA.

Provides that an athlete agent and the 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. Provides that an educational institution's right of action does not accrue until the institution discovers, or by exercise of reasonable diligence, would have discovered the violation.

Section 7. Amends s. 468.4565, F.S., relating to the requirement to maintain business records. Removes the reference to licensure, to extend the records period from 4 to 5 years, and to specify the minimum content of 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 an effective date of July 1, 2002.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Not anticipated to be significant.

2. Expenditures:

None anticipated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Not anticipated to be significant.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None noted.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION:

Prepared by:

Alan W. Livingston

Staff Director:

Paul Liepshutz

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AS REVISED BY THE COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

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AS FURTHER REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:

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