

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/SB 2468

SPONSOR: Committee on Regulated Industries and Senator King

SUBJECT: Athletic Agents

DATE: April 12, 2000

REVISED: 04/18/00 _____

	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>JU</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill makes it a second degree felony to induce a student athlete to enter into an agency agreement, to use or collaborate with others to effect an agency agreement by an illegal inducement, or to knowingly assist a person who has been convicted of or found guilty of, or who has entered a plea of nolo contendere to, regardless of adjudication, a violation of the illegal inducement law.

The bill also provides new civil and administrative penalties.

The bill allows colleges and universities that prevail in civil suits to recover treble damages rather than actual damages.

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

II. Present Situation:

Athlete agents are regulated under Chapter 468, F.S. 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.

s. 468.52(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.

s. 468.52(5), F.S.

The Legislature began regulating athlete agents in 1988. *See*, Chapter 88-229, Laws of Florida. The Legislature found that dishonest and unscrupulous practices by athlete agents could cause serious harm to student athletes and the schools they attend. s. 468.451, F.S. Chapter 468, F.S., provides governing definitions; biennial registration requirements for athlete agents; procedures and notification requirements for the student athlete and the athlete agent upon execution of an agent contract; contract rescission procedures; and prohibited practices and penalties.

This basic framework was amended by Chapter 95-307, Laws of Florida. Pursuant to the 1995 changes, athlete agents must be licensed by the Department of Business and Professional Regulation, rather than merely registered. Furthermore, the activities of athlete agents are more closely regulated. For example, the law now defines “contact” in s. 468.452, F.S., to mean “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.”

Any person who practices as an athlete agent must be licensed. To be licensed, a person must:

- be at least 18 years of age;
- be of good moral character;
- pass an examination provided by the Department that tests, in part, the person’s knowledge of the laws and rules relating to athlete agents;
- complete the application form and remit an application fee not to exceed \$500, an examination fee not to exceed the actual cost for the examination plus \$500, an active licensure fee not to exceed \$2,000, 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;
- 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;
- 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, F.S. Members of the Florida Bar are exempt from the examination required by this section and the examination fees. Section 468.453(3), F.S. Section 468.4561, F.S., makes it a third degree felony for any person to conduct business as an athlete agent without holding an

active license, or to knowingly aid or abet another person to conduct business as an unlicensed athlete agent.

Section 468.456(1), F.S., contains a list of prohibited acts. Violation of a prohibited act subjects an athlete agent to department imposed disciplinary actions. s. 468.456(3), F.S. Prohibited acts by athlete agents include 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. s. 468.456(1), F.S.

Section 468.456(1)(f), F.S., provides that it is a prohibited act for a licensed athlete agent to offer anything of value to any person to induce a student athlete to enter into an agreement by which an athlete agent will represent the student athlete.

Failure of the athlete agent to notify the athletic director or the president of the college or university in which the student athlete is enrolled, that a contract has been entered into, is a felony of third degree, punishable as provided in ss. 775.082, 775.083, 775.084, 775.089, and 775.091, F.S.

Section 468.4562, F.S., provides that a college or institution may sue for damages any person who violates the athlete agent law. Damages include actual damages, punitive damages, court costs, and reasonable attorney's fees.

III. Effect of Proposed Changes:

The bill amends s. 468.456, F.S., to provide that it is a prohibited act for a licensed athlete agent to collaborate with any athlete agent who has been convicted of or found guilty of, or who has entered a plea of nolo contendere to, regardless of adjudication, a violation of s. 468.45615, F.S., or to collaborate with people employed by any such athlete agent.

Section 468.456, F.S., also is amended to provide that the Department, in addition to existing disciplinary actions, shall suspend or revoke the license of any athlete agent who provides an illegal inducement as described in s. 468.456(1)(f), F.S., or who collaborates with any athlete agent who has been convicted of or found guilty of, or who has entered a plea of nolo contendere to, regardless of adjudication, a violation of s. 468.45615, F.S.

The bill makes it a second degree felony to provide an illegal inducement as described in s. 468.456(1)(f), F.S. If a person who has been convicted of or found guilty of, or who has entered a plea of nolo contendere to, regardless of adjudication, a violation of s. 468.45615, F.S., later collaborates with another person to recruit student athletes, that person commits another second degree felony. Furthermore, the collaborator is guilty of a second degree felony if the collaborator knowingly assists in the recruitment of student athletes. A second degree felony is punishable by a term of imprisonment not exceeding 15 years, and a fine of up to \$10,000. Additionally, the court may automatically suspend the license of the athlete agent pending the outcome of any administrative action against the person by the Department.

The bill amends s. 468.4562, F.S., to allow colleges and universities that prevail in suits brought under s. 468.4562, F.S., to recover treble damages rather than actual damages.

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:

More aggressive criminal and civil sanctions for violations of the athlete agent law may serve as a deterrent to those who would compromise the integrity of college athletics for financial gain.

C. Government Sector Impact:

This bill creates new second degree felony offenses. The Criminal Justice Estimating Conference is statutorily charged with reviewing the potential impact of newly created crimes on the state prison system. As of this writing, the Conference has not reviewed this bill's prison bed impact. Staff anticipates that the Conference will conclude that this bill's impact will be insignificant. Further, given the small number of likely offenders, it is not anticipated that there would be a significant impact on the courts, prosecutors, or defense.

VI. Technical Deficiencies:

1. The phrase "plea of guilty" appears to have been inadvertently omitted from the list of terms found on page 2, lines 12 -13; 23-24. Also, the use of the term "regardless of adjudication" may be read to modify only the clause immediately preceding it, although the intent appears to be broader.
2. The bill's intent would be more clear if the word "recruit" were replaced with the following: "solicitation of a student athlete to enter into an agent contract."
3. It is not clear whether use of the word "knowingly" on page 2, line 21 is intended to require that the person have knowledge of the other person's violation, or whether it is intended only

to require knowledge of actively assisting in the recruitment. If “knowingly” is to require knowledge of the other person’s violation, this provision should be clarified.

4. Use of the word “automatically,” on page 2, line 29, may create confusion since it appears license suspension is intended to be at the court’s discretion.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Criminal Justice:

Corrects certain technical deficiencies as follows. Rewords list of terms to include “plead guilty” and clarifies that “regardless of whether adjudication is withheld” modifies entire list of terms. Clarifies that having knowledge of the other’s person violation is required. Removes the word “automatically” to clarify that license suspension is intended to be at the court’s discretion.

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