

Getting Tough on Athlete Agents Florida Leads the Charge To Tighten Player Representative Regulations

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The rules are changing for athlete agents. Across the country, states are getting tough on agents, passing new legislation regulating player representatives, and taking steps to attempt to ensure the end of many unscrupulous practices whereby some agents seek new clients at any cost. Approximately half of all states now have enacted some form of athlete agent regulation.² And in California, an athlete agent recently was sued by the University of Southern California for allegedly having improper contact with USC football players.³

But perhaps no state is as tough on athlete agents as Florida. Amidst recent scandals involving the college football program at Florida State University, and alleged incidents of improper student-athlete contact with pro sports agents at the University of Miami, the Florida state legislature has taken action. On October 1, 1995, the nation's toughest new athlete agent regulation went into effect, posing a model which may become the example for other states to follow.

The law requires athlete agents to pass an examination prior to being licensed to practice, to pay rather extensive registration fees, and to fulfill continuing education requirements.

The new law was born in the wake of the "Foot Locker" scandal at Florida State University, when an agent allegedly gave at least two Seminoles football players free access to shoes and apparel in a Foot Locker store.

"This story expanded," explains State Representative Jim King, Jr., the lead sponsor of the new law, "into an investigation implicating the larger questions of the ineffective regulatory controls available regarding athlete agents and the lack of avenues for schools to attempt to recover revenues lost through penalties or sanctions associated with athletes rendering themselves ineligible from contacts with agents."

As it passed through the state legislature, the official legislative findings and intent became clear. "The Legislature finds," the statute reads, "that dishonest or unscrupulous practices by agents who solicit representation of student athletes can cause significant harm to student athletes and the academic institutions for which they play. It is the intent of the legislature to protect the interests of student athletes

and academic institutions by regulating the activities of athlete agents which involve student athletes at colleges or universities in this state.”

The result of the legislative process, fueled by the Foot Locker scandal, was the passage into law of House Bill 1807 on June 15, 1995.⁴ The law went into effect three and a half months later.

The new law focuses on three distinct areas of concern: licensing and education of agents, sports agency practice, and the permitting of the bringing of civil litigation against sports agents by Florida’s colleges and universities.

■ LICENSING AND EDUCATION

Perhaps the most significant areas of concern addressed by the new law are agent licensing and continuing education. The new law requires all agents to pass an examination given by the Florida Department of Business and Professional Regulation, prior to being licensed to practice as a sports agent, making Florida the first state to provide for such a prerequisite to registration. The examination is intended to test the potential athlete agent’s knowledge of both the law and any rules regarding athlete agents. An attorney licensed with the Florida Bar is exempt from the law and rules section of the examination, but nevertheless appears to be required to pass some portion of the athlete agent examination before being licensed to practice as a sports agent in Florida.⁵

Florida’s Athlete Agent Law also requires that each athlete agent complete up to 20 hours of continuing education within every two year period. This continuing education must be of the kind that will “promote the ability of athlete agents to practice their profession legally and ethically. Continuing education may encompass, but shall not be restricted to, laws and rules for athlete agents and rules and policies of athletic conferences or collegiate athletic organizations.” An agent may receive continuing education credit from attending lectures, college-level courses, or from attendance at a Department of Business and Professional Regulation rulemaking or disciplinary hearing.⁶

The new law requires rather extensive fees to be paid for this licensing and education. An agent must submit an application fee to be set by the Department of Business and Professional Regulation at no more than \$500, an examination fee not to exceed the actual cost of the examination plus \$500, and an active licensing fee of up to \$2,000, according to the new law.

In addition, the agent must post a \$15,000 surety bond in favor of the State’s Department of Business and Professional Regulation before being licensed. The bond value shall be used for the benefit of any student-athlete or state university that is injured as a result of any illegal acts by the agent. Finally, an agent must undergo an FBI criminal records check, and must never have been convicted of any crime which “relates to the applicant’s practice or ability to practice as an athlete agent.”

Failure of an agent to register as a licensed sports agent in Florida is a third degree felony, punishable by up to five years imprisonment, a \$5,000 fine, or both. An individual who aids or abets an unlicensed agent in practicing as a sports agent also is subject to third degree felony charges.⁷ Florida already has shown its willingness to prosecute agents who fail to register with the state. Recently, a sports

agent named Joel Segal was hit with a \$3,500 fine for failing to register as a sports agent.⁸

■ AGENCY PRACTICE

The Florida Athlete Agent Law's second primary focus is on an agent's activities after the individual has been licensed to practice in Florida. Under the Florida law, an athlete agent and a currently eligible student-athlete who have signed an athlete-agent representation contract must notify the student-athlete's educational institution that the student-athlete has signed such a contract. This notice must be given within 72 hours after the student-athlete and the agent enter into the agreement. An athlete agent who fails to notify the student-athlete's school of the contract risks being found guilty of a third degree felony.⁹

Within 15 days after the student-athlete's institution receives this required notice, the student-athlete still may rescind the contract with the athlete agent by giving written notice to the agent. This right of contract rescission must be clearly outlined in the athlete-agent contract and may not be waived by the student-athlete under any circumstances.¹⁰

The statute also requires that specific contract language be used to notify the student-athlete of his or her rights and responsibilities, as well as to educate the student-athlete that he or she may lose the eligibility required to participate in intercollegiate athletics by signing the athlete-agent contract, even if that contract is rescinded.¹¹ The statute requires that the following language be incorporated in the contract in 10-point bold type:

“WARNING TO THE STUDENT-ATHLETE: WHEN YOU SIGN THIS CONTRACT, YOU WILL LIKELY IMMEDIATELY LOSE YOUR ELIGIBILITY TO COMPETE IN INTERCOLLEGIATE ATHLETICS. TO AVOID CRIMINAL PROSECUTION YOU MUST GIVE WRITTEN NOTICE THAT YOU HAVE ENTERED INTO THIS CONTRACT TO THE ATHLETIC DIRECTOR OR PRESIDENT OF YOUR COLLEGE OR UNIVERSITY WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT OR PRIOR TO PARTICIPATION IN INTERCOLLEGIATE ATHLETICS, WHICHEVER COMES FIRST. FAILURE TO PROVIDE THIS NOTICE IS A CRIMINAL OFFENSE. DO NOT SIGN THIS CONTRACT UNTIL YOU HAVE READ IT AND FILLED IN ANY BLANK SPACES. YOU MAY CANCEL THIS CONTRACT BY NOTIFYING THE ATHLETE AGENT IN WRITING OF YOUR DESIRE TO CANCEL NOT LATER THAN THE 15TH DAY AFTER THE DATE YOU SIGN THIS CONTRACT. HOWEVER, EVEN IF YOU CANCEL THIS CONTRACT, THE INTERCOLLEGIATE ATHLETIC ASSOCIATION OR CONFERENCE TO WHICH YOUR COLLEGE OR UNIVERSITY BELONGS MAY NOT RESTORE YOUR ELIGIBILITY TO PARTICIPATE IN INTERCOLLEGIATE ATHLETICS.”¹²

The law also specifies certain activities which, if committed by the athlete agent, may result in state-imposed penalties, including fines of up to \$5,000 and revocation of an agent's license to practice in Florida. These activities include:

- 1) Violation of any law relating to practicing as an athlete agent,

- 2) Failure to account for assets belonging to another individual that have come under the agent's control,
- 3) Conduct demonstrating bad faith or dishonesty,
- 4) Co-mingling of a clients' money or property,
- 5) Accepting a student-athlete client in exchange for the payment of a referral fee or similar consideration to an employee or coach of a university,
- 6) Failure of an agent to use his or her name and license number in any advertising,
- 7) Publishing any "false or misleading information or advertisements, or giving any false information or making false promises to a student athlete," and
- 8) Violating an NCAA or conference bylaw.¹³

The statute does permit an agent to send a student-athlete written materials provided that the agent simultaneously sends the identical materials to the athletic director at the student-athlete's school.¹⁴

■ CIVIL ACTION BY A STATE COLLEGE

The new Florida law also uniquely gives a Florida state college or university the standing to file a civil suit against an agent who has violated Florida's Athlete Agent Law if that agent's actions cause a university to be disqualified or suspended from participation in intercollegiate athletics.¹⁵ That suspension or disqualification must result in any "adverse financial impact" such as lost revenues from a canceled sporting event, the loss of the right to grant an athletic scholarship, the loss of the right to recruit a student-athlete, prohibition from post-season competition, or the forfeiture of an athletic contest.¹⁶

An institution may fight back to recover these damages with a civil suit against the athlete agent directly responsible for such losses. The suit may seek actual damages, punitive damages, court costs and attorney's fees.¹⁷

The Florida Athlete Agent Law may be the first of the new wave of tougher athlete agent state laws. It certainly will not be the last.

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Endnotes

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² "Agent Restraint Often a Matter of Law," Chicago Tribune, August 29, 1995, at Sports1. The following states are among those that require an athlete agent to file a registration application with the state: Alabama, Arkansas,

California, Connecticut, Florida, Georgia, Iowa, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Texas, and Washington, "States Regulating Professional Sports Agents," *The Sports Lawyer*, Fall, 1995, at 3.

- ³ The suit involved allegations that the agent gave three University of Southern California football players airline tickets, calling cards, and other inducements in an effort to entice them to sign agent representation contracts with him. The suit was settled out of court in October, "Sports Agent Settles Lawsuit With Southern California," *The NCAA News*, October 30, 1995, at 24.
- ⁴ The bill passed into law as chapter 95-307, Laws of Florida, without the signature of Florida Governor Lawton Chiles.
- ⁵Section 468.453(2), Florida Statutes. The Florida Department of Business and Professional Regulation, the state agency which regulates the athlete agent registration process, currently is working to develop this examination in compliance with the new law.
- ⁶Section 468.4563, Florida Statutes. Future anticipated regulations may clarify whether attorneys currently licensed with the Florida Bar would be required to satisfy this continuing education requirement. As do many state bar associations, the Florida Bar already requires attorneys licensed in Florida to satisfy certain continuing legal education requirements in order to maintain good standing with the Florida Bar.
- ⁷Section 468.4561, Florida Statutes. Aiding and abetting an unlicensed sports agent is defined by the new law as actively assisting in the recruitment or solicitation of a student-athlete.
- ⁸"Concern Mounts Over Sports Agents' Influence," *The NCAA News*, September 18, 1995, at 14.
- ⁹Section 468.454(1), Florida Statutes.
- ¹⁰Section 468.454(4), Florida Statutes.
- ¹¹NCAA bylaw 12.1.1(f) provides that a student-athlete will become ineligible for participation in intercollegiate athletics upon entering into an agreement with an agent. If that athlete-agent contract is rescinded, the student-athlete may petition to have his or her eligibility restored by the NCAA under NCAA bylaw 14.13.1. However, restoration of a student-athlete's eligibility is far from automatic. It is therefore easily conceivable that a student-athlete who signs, and then rescinds, an athlete-agent representation contract still would be declared ineligible for intercollegiate athletic competition and would be left with nothing — without both a college and a pro sports agent.

¹²Section 468.454(2), Florida Statutes.

¹³Section 468.456(1), Florida Statutes.

¹⁴Section 468.456(2)(a), Florida Statutes.

¹⁵Section 468.4562, Florida Statutes.

¹⁶Section 468.4562(2), Florida Statutes.

¹⁷Section 468.4562, Florida Statutes.