

SECOND REGULAR SESSION

[PERFECTED]

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 739

91ST GENERAL ASSEMBLY

Reported from the Committee on Interstate Cooperation, March 13, 2002, with recommendation that the Senate Committee Substitute do pass and be placed on the Consent Calendar.

Removed from the Consent Calendar March 19, 2002.

Re-reported from the Committee on April 4, 2002, with recommendation that the Senate Committee Substitute do pass.

Senate Committee Substitute for Senate Bill No. 739, adopted April 18, 2002.

Taken up for Perfection April 18, 2002. Bill declared Perfected and Ordered Printed.

TERRY L. SPIELER, Secretary.

2806S.03P

AN ACT

To repeal sections 436.200, 436.205, 436.209 and 436.212, RSMo, and to enact in lieu thereof eighteen new sections relating to athlete agents.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 436.200, 436.205, 436.209 and 436.212, RSMo, are repealed and eighteen new sections enacted in lieu thereof, to be known as sections 436.215, 436.218, 436.221, 436.224, 436.227, 436.230, 436.233, 436.236, 436.239, 436.242, 436.245, 436.248, 436.251, 436.254, 436.260, 436.266, 436.269, and 436.272, to read as follows:

436.215. Sections 436.215 to 436.272 may be cited as the "Uniform Athlete Agents Act".

436.218. As used in sections 436.215 to 436.272, the following terms shall mean:

(1) "Agency contract", an agreement in which a student-athlete authorizes a person to negotiate or solicit on behalf of the student-athlete a professional-sports-services contract or an endorsement contract;

(2) "Athlete agent", an individual who enters into an agency contract with a student-athlete or, directly or indirectly, recruits or solicits a student-athlete to enter

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

into an agency contract. The term does not include a spouse, parent, sibling, grandparent, or guardian of the student-athlete or an individual acting solely on behalf of a professional sports team or professional sports organization. The term includes an individual who represents to the public that the individual is an athlete agent;

(3) "Athletic director", an individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or the athletic program for females, as appropriate;

(4) "Contact", a communication, direct or indirect, between an athlete agent and a student-athlete, to recruit or solicit the student-athlete to enter into an agency contract;

(5) "Director", the director of the division of professional registration;

(6) "Division", the division of professional registration;

(7) "Endorsement contract", an agreement under which a student-athlete is employed or receives consideration to use on behalf of the other party any value that the student-athlete may have because of publicity, reputation, following, or fame obtained because of athletic ability or performance;

(8) "Intercollegiate sport", a sport played at the collegiate level for which eligibility requirements for participation by a student-athlete are established by a national association for the promotion or regulation of collegiate athletics;

(9) "Person", an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity;

(10) "Professional-sports-services contract", an agreement under which an individual is employed or agrees to render services as a player on a professional sports team, with a professional sports organization, or as a professional athlete;

(11) "Record", information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(12) "Registration", registration as an athlete agent pursuant to sections 436.215 to 436.272;

(13) "State", a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States;

(14) "Student-athlete", an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport. If an

individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student-athlete for purposes of that sport.

436.221. 1. The director of the division of professional registration shall administer the provisions of sections 436.215 to 436.272.

2. By engaging in the business of an athlete agent in this state, a nonresident individual appoints the director as the individual's agent to accept service of process in any civil action related to the individual's business as an athlete agent in this state.

3. The director may issue subpoenas for any relevant material pursuant to sections 436.215 to 436.272.

436.224. 1. Except as otherwise provided in subsection 2 of this section, an individual may not act as an athlete agent in this state before being issued a certificate of registration pursuant to section 436.230 or 436.236.

2. An individual may act as an athlete agent before being issued a certificate of registration for all purposes except signing an agency contract if:

(1) A student-athlete or another acting on behalf of the student-athlete initiates communication with the individual; and

(2) Within seven days after an initial act as an athlete agent, the individual submits an application to register as an athlete agent in this state.

3. An agency contract resulting from conduct in violation of this section is void. The athlete agent shall return any consideration received under the contract.

436.227. 1. An applicant for registration shall submit an application for registration to the director in a form prescribed by the director. An application filed under this section is a public record. Except as otherwise provided in subsection 2 of this section, the application must be in the name of an individual and signed by the applicant under penalty of perjury and must state or contain:

(1) The name of the applicant and the address of the applicant's principal place of business;

(2) The name of the applicant's business or employer, if applicable;

(3) Any business or occupation engaged in by the applicant for the five years next preceding the date of submission of the application;

(4) A description of the applicant's:

(a) Formal training as an athlete agent;

(b) Practical experience as an athlete agent; and

(c) Educational background relating to the applicant's activities as an athlete agent;

(5) The names and addresses of three individuals not related to the applicant who are willing to serve as references;

(6) The name, sport, and last known team for each individual for whom the applicant provided services as an athlete agent during the five years next preceding the date of submission of the application;

(7) The names and addresses of all persons who are:

(a) With respect to the athlete agent's business if it is not a corporation, the partners, officers, associates, or profit-sharers; and

(b) With respect to a corporation employing the athlete agent, the officers, directors, and any shareholder of the corporation with a five percent or greater interest;

(8) Whether the applicant or any other person named pursuant to subdivision (7) of this subsection has been convicted of a crime that, if committed in this state, would be a felony or other crime involving moral turpitude, and identify the crime;

(9) Whether there has been any administrative or judicial determination that the applicant or any other person named pursuant to subdivision (7) of this subsection has made a false, misleading, deceptive, or fraudulent representation;

(10) Any instance in which the conduct of the applicant or any other person named pursuant to subdivision (7) of this subsection resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or educational institution;

(11) Any sanction, suspension, or disciplinary action taken against the applicant or any other person named pursuant to subdivision (7) of this subsection arising out of occupational or professional conduct; and

(12) Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any other person named pursuant to subdivision (7) of this subsection as an athlete agent in any state.

2. An individual who has submitted an application for, and received a certificate of, registration or licensure as an athlete agent in another state, may submit a copy of the application and a valid certificate of registration or licensure from the other state in lieu of submitting an application in the form prescribed pursuant to subsection 1 of this section. The director shall accept the application and the certificate from the other state as an application for registration in this state if the application to the other state:

(1) Was submitted in the other state within the six months next preceding the submission of the application in this state and the applicant certifies the information contained in the application is current;

(2) Contains information substantially similar to or more comprehensive than

that required in an application submitted in this state; and

(3) Was signed by the applicant under penalty of perjury.

436.230. 1. Except as otherwise provided in subsection 3 of this section, the director shall issue a certificate of registration to an individual who complies with subsection 1 of section 436.227.

2. Except as otherwise provided in subsection 3 of this section, the director shall issue a certificate of registration to an individual whose application has been accepted under subsection 2 of section 436.227.

3. The director may refuse to issue a certificate of registration if the director determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to serve as an athlete agent. In making the determination, the director may consider whether the applicant has:

(1) Been convicted of a crime that, if committed in this state, would be a felony or other crime involving moral turpitude;

(2) Made a materially false, misleading, deceptive, or fraudulent representation as an athlete agent or in the application;

(3) Engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;

(4) Engaged in conduct prohibited by section 436.254;

(5) Had a registration or licensure as an athlete agent suspended, revoked, or denied or been refused renewal of registration or licensure in any state;

(6) Engaged in conduct or failed to engage in conduct the consequence of which was that a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event was imposed on a student-athlete or educational institution; or

(7) Engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty, or integrity.

4. In making a determination pursuant to subsection 3 of this section, the director shall consider:

(1) How recently the conduct occurred;

(2) The nature of the conduct and the context in which it occurred; and

(3) Any other relevant conduct of the applicant.

5. An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the director. An application filed under this section is a public record. The application for renewal must be signed by the applicant under penalty of perjury and must contain current information on all matters required in an original registration.

6. An individual who has submitted an application for renewal of registration or licensure in another state, in lieu of submitting an application for renewal in the form prescribed pursuant to subsection 5 of this section, may file a copy of the application for renewal and a valid certificate of registration from the other state. The director shall accept the application for renewal from the other state as an application for renewal in this state if the application to the other state:

(1) Was submitted in the other state within the last six months and the applicant certifies the information contained in the application for renewal is current;

(2) Contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this state; and

(3) Was signed by the applicant under penalty of perjury.

7. A certificate of registration or a renewal of a registration is valid for two years.

436.233. 1. The director may suspend, revoke, or refuse to renew a registration for conduct that would have justified denial of registration pursuant to subsection 3 of section 436.230.

2. The director may deny, suspend, revoke, or refuse to renew a registration only after proper notice and an opportunity for a hearing. Any athlete agent whose registration was adversely affected may apply for an administrative review of the proceedings pursuant to sections 621.015 to 621.205, RSMo.

436.236. The director may issue a temporary certificate of registration while an application for registration or renewal is pending.

436.239. 1. An application for registration or renewal of registration shall be accompanied by a fee which shall be determined by the director and established by rule. All fees payable pursuant to the provisions of this section shall be collected by the division of professional registration and transmitted to the department of revenue for deposit in the state treasury to the credit of the fund to be known as the "Athlete Agent Fund" which is hereby established. The provisions of section 33.080, RSMo, to the contrary notwithstanding, money in the athlete agent fund shall not be transferred and placed to the credit of general revenue until the amount in the athlete agent fund at the end of the biennium exceeds two times the amount of the appropriations from such fund for the preceding fiscal year or, if the director allows renewal of registration less frequently than yearly, then three times the appropriations from such fund for the preceding fiscal year; provided that no amount from such fund may be transferred to the credit of general revenue earlier than two years following the effective date of this section. The amount, if any, which may be transferred to the credit of general revenue after two years following the effective date

of this section is that amount in the athlete agent fund which exceeds the appropriate multiple of the appropriations from such fund for the preceding fiscal year.

2. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2002, shall be invalid and void.

436.242. 1. An agency contract must be in a record, signed by the parties.

2. An agency contract must state or contain:

(1) The amount and method of calculating the consideration to be paid by the student-athlete for services to be provided by the athlete agent under the contract and 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;

(2) The name of any person not listed in the application for registration or renewal who will be compensated because the student-athlete signed the agency contract;

(3) A description of any expenses that the student-athlete agrees to reimburse;

(4) A description of the services to be provided to the student-athlete;

(5) The duration of the contract; and

(6) The date of execution.

3. An agency contract must contain, in close proximity to the signature of the student-athlete, a conspicuous notice in boldface type in capital letters stating:

"WARNING TO STUDENT-ATHLETE

IF YOU SIGN THIS CONTRACT:

(1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT-ATHLETE IN YOUR SPORT;

(2) BOTH YOU AND YOUR ATHLETE AGENT ARE REQUIRED TO TELL YOUR ATHLETIC DIRECTOR, IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER ENTERING INTO AN AGENCY CONTRACT; AND

(3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THE CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY."

4. An agency contract that does not conform to this section is voidable by the

student-athlete.

5. The athlete agent shall give a copy of the signed agency contract to the student-athlete at the time of signing.

436.245. 1. Within seventy-two hours after entering into an agency contract or before the next scheduled athletic event in which the student-athlete may participate, whichever occurs first, the athlete agent shall give notice in a record of the existence of the contract to the athletic director of the educational institution at which the student-athlete is enrolled or the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.

2. Within seventy-two hours after entering into an agency contract or before the next athletic event in which the student-athlete may participate, whichever occurs first, the student-athlete shall inform the athletic director of the educational institution at which the student-athlete is enrolled that he or she has entered into an agency contract.

436.248. 1. A student-athlete may cancel an agency contract by giving notice in a record to the athlete agent of the cancellation within fourteen days after the contract is signed.

2. A student-athlete may not waive the right to cancel an agency contract.

3. If a student-athlete cancels an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the agent to induce the student-athlete to enter into the contract.

436.251. 1. An athlete agent shall retain the following records for a period of five years:

- (1) The name and address of each individual represented by the athlete agent;**
- (2) Any agency contract entered into by the athlete agent; and**
- (3) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete.**

2. Records required by subsection 1 of this section to be retained are open to inspection by the director during normal business hours.

436.254. 1. An athlete agent may not do any of the following with the intent to induce a student-athlete to enter into an agency contract:

(1) Give any materially false or misleading information or make a materially false promise or representation;

(2) Furnish anything of value to a student-athlete before the student-athlete enters into the agency contract; or

(3) Furnish anything of value to any individual other than the student-athlete or another registered athlete agent.

2. An athlete agent may not intentionally:

- (1) Initiate contact with a student-athlete unless registered pursuant to sections 436.215 to 436.272;**
- (2) Refuse or willfully fail to retain or permit inspection of the records required by section 436.251;**
- (3) Violate section 436.224 by failing to register;**
- (4) Provide materially false or misleading information in an application for registration or renewal of registration;**
- (5) Predate or postdate an agency contract; or**
- (6) Fail to notify a student-athlete prior to the student athlete's signing an agency contract for a particular sport that the signing by the student-athlete may make the student-athlete ineligible to participate as a student-athlete in that sport.**

436.260. 1. An educational institution has a right of action against an athlete agent or a former student-athlete for damages caused by a violation of sections 436.215 to 436.272. In an action under this section, the court may award to the prevailing party costs and reasonable attorney's fees.

2. Damages of an educational institution under subsection 1 of this section include losses and expenses incurred because, as a result of the activities of an athlete agent or former student-athlete, the educational institution was injured by a violation of sections 436.215 to 436.272 or was penalized, disqualified, or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by reasonable self-imposed disciplinary action taken to mitigate sanctions.

3. A right of action under this section does not accrue until the educational institution discovers or by the exercise of reasonable diligence would have discovered the violation by the athlete agent or former student-athlete.

4. Any liability of the athlete agent or the former student-athlete under this section is several and not joint.

5. Sections 436.215 to 436.272 do not restrict rights, remedies, or defenses of any person under law or equity.

436.266. In applying and construing sections 436.215 to 436.272, consideration must be given to the need to promote uniformity of the law with respect to the subject matter of sections 436.215 to 436.272 among states that enact it.

436.269. If any provision of sections 436.215 to 436.272 or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of sections 436.215 to 436.272 which can be given effect without the invalid provision or application, and to this end the provisions of sections 436.215 to

436.272 are severable.

436.272. Any moneys collected by the director pursuant to section 436.263 shall immediately be transferred to the department of revenue for deposit in the state treasury to the credit of general revenue.

[436.200. As used in this act the following terms shall mean:

(1) "Agent contract", any contract or agreement pursuant to which a student athlete authorizes an athlete agent to represent him in the marketing of his athletic ability or reputation in a sport;

(2) "Athlete agent", a person that, for compensation, directly or indirectly recruits or solicits a student athlete to enter into an agent contract, financial services contract or professional sports services contract;

(3) "Financial services contract", any contract or agreement pursuant to which a student athlete authorizes an athlete agent to provide financial services for the student athlete, including but not limited to the making and execution of investment and other financial decisions by the athlete agent on behalf of the student athlete;

(4) "Person", an individual, company, corporation, association, partnership or other entity;

(5) "Professional sports services contract", any contract or agreement pursuant to which a student athlete authorizes an athlete agent to obtain employment for the student athlete with a professional sports team or as a professional athlete;

(6) "Student athlete", any athlete who practices for or otherwise participates in intercollegiate athletics at any college or university located within this state.]

[436.205. 1. Each athlete agent must register biennially with the secretary of state on forms to be provided by the secretary of state and, at the same time, pay to the secretary of state a registration fee of five hundred dollars for which the secretary of state shall issue a registration certificate entitling the holder to operate as an athlete agent for a period of two years.

2. When the business address of any athlete agent operating in this state is changed, the athlete agent must notify the secretary of state within thirty days after the change of address.

3. It is unlawful for any person to operate as an athlete agent unless he is registered as provided in this section. Failure of the athlete agent to register is a class B misdemeanor.

4. The secretary of state may suspend or revoke the registration of any athlete agent for failing to comply with the provisions of this section. The suspension or revocation of any registration may be reviewed by a court of competent jurisdiction.]

[436.209. 1. A student athlete who is subject to the rules and regulations of the

National Collegiate Athletic Association, the National Association for Intercollegiate Athletics, or the National Junior College Athletic Association, and who enters into an agent contract, financial services contract or professional sports services contract with an athlete agent must provide written notification to the athletic director or the president of the college or university in which he is enrolled that he has entered into such a contract. Written notification must be given prior to practicing for or participating in any athletic event on behalf of any college or university or within seventy-two hours after entering into the contract, whichever occurs first. Failure of the student athlete to provide this notification is an infraction.

2. An athlete agent who enters into an agent contract, financial services contract or professional sports services contract with a student athlete who is subject to the rules and regulations of the National Collegiate Athletic Association, the National Association for Intercollegiate Athletics, or the National Junior College Athletic Association must provide written notification to the athletic director or the president of the college or university in which the student athlete is enrolled that the student athlete has entered into such a contract. Written notification of such a contract must be given prior to the student athlete's practicing for or participating in any athletic event on behalf of any college or university or within seventy-two hours after entering into said contract, whichever occurs first. Failure of the athlete agent to provide this notification is a class B misdemeanor.

3. An agent contract, financial services contract or professional sports services contract between a student athlete and an athlete agent must have a notice printed near the space for the student athlete's signature which must contain the following statement in ten-point boldfaced type: "WARNING: IF YOU AS A STUDENT ATHLETE SIGN THIS CONTRACT, YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE IN INTERCOLLEGIATE ATHLETICS. PURSUANT TO MISSOURI LAW, YOU MUST NOTIFY THE ATHLETIC DIRECTOR OR PRESIDENT OF YOUR COLLEGE OR UNIVERSITY IN WRITING PRIOR TO PRACTICING FOR OR PARTICIPATING IN ANY ATHLETIC EVENT ON BEHALF OF ANY COLLEGE OR UNIVERSITY OR WITHIN SEVENTY-TWO HOURS AFTER ENTERING INTO THIS CONTRACT, WHICHEVER OCCURS FIRST. FAILURE TO PROVIDE THIS NOTICE IS A CRIMINAL OFFENSE."

4. An agent contract, financial services contract or professional sports services contract entered into between a student athlete and an athlete agent which fails to provide the notification required by this section is null, void and unenforceable.

5. Any student athlete or athlete agent who enters into an agent contract, financial services contract or professional sports services contract and fails to provide the

notification required by this section, is liable to the college or university in which the student athlete is enrolled for damages that result from the student athlete's subsequent ineligibility. In addition to any damages awarded pursuant to this section, additional damages may be assessed in an amount equal to three times the value of the athletic scholarship furnished by the institution to the student athlete during the student athlete's period of eligibility.

6. Within ten days after the date on which the contractual relationship between the athlete agent and the student athlete arises or after notification of such contractual relationship is received by the athletic director or president of the college or university in which the student is enrolled, whichever occurs later, the student athlete shall have the right to rescind the contract or any contractual relationship with the athlete agent by giving notice in writing of his intent to rescind. The student athlete may not under any circumstances effect a waiver of his right to rescind, and any attempt to do so shall be null, void and unenforceable.]

[436.212. 1. An athlete shall not publish or cause to be published false or misleading information or advertisements, nor give any false information or make false promises to a student athlete concerning employment.

2. An athlete agent shall not accept as a client a student athlete referred by an employee of or a coach for a college or university located within this state in exchange for any consideration.

3. An athlete agent shall not enter into any agreement, written or oral, by which the athlete agent offers anything of value to any employee of or a coach for a college or university located within this state in return for the referral of any student athlete clients by that employee or coach.

4. An athlete agent shall not offer anything of value to induce a student athlete to enter into an agent contract, financial services contract, professional sports services contract or other agreement by which the athlete agent will represent the student athlete. Negotiations regarding the athlete agent's fee shall not be considered an inducement.

5. A person shall not conduct business as an athlete agent if he is not registered or if his registration is suspended or revoked.

6. Violation of any provision of this section is a class B misdemeanor.]