*Virginia M. McInerney* *Legislative Service Commission*

# Am. Sub. H.B. 107

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(As Passed by the House)

**Reps. Tiberi, Gardner, Corbin, Willamowski, Taylor, Beatty, Evans, Jones, Hartnett, Corbin, Perry, Barnes, Boyd, Young, Ogg, Grendell**

## BILL SUMMARY

- Requires athlete agents to register with the Ohio Athletic Commission and specifies registration requirements.
- Authorizes the Commission to regulate athlete agents under the bill's provisions.
- Requires at least one of the members of the Commission to be knowledgeable and experienced in each of the areas of high school, collegiate, and professional athletics instead of boxing.
- Specifies both duties and prohibited activities of athlete agents.
- Expands requirements concerning agent contracts, including specifying verbatim content that must be included in agent contracts.
- Establishes financial security, trust fund, and fee requirements applicable to athlete agents.
- Establishes investment related disclosure requirements for athlete agents.
- Prohibits an athlete agent from publishing false advertisements.
- Imposes record keeping requirements upon athlete agents.
- Modifies existing remedies for violations of the Athlete Agents Law.
- Modifies existing penalties and creates new penalties for violations of the Athlete Agents Law.
- Revises certain definitions and creates new defined terms for purposes of the Athlete Agents Law.

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## CONTENT AND OPERATION

### ***Overview***

Under current law, the Ohio Athletic Commission is authorized to regulate only prize fights and public boxing or wrestling matches or exhibitions under the Boxing Law (R.C. Chapter 3773.). The bill expands the Commission's regulatory authority to include the regulation of athlete agents under the Athlete Agents Law (R.C. Chapter 4771.).

Currently, the Athlete Agents Law establishes requirements concerning agent contracts with student athletes and specifies that contracts entered into in violation of those requirements are void and unenforceable. The law also establishes remedies and penalties for violation of the Athlete Agents Law. No specific governmental entity administers the Law.

The bill expands the existing Athlete Agents Law by requiring athlete agents to register with the Ohio Athletic Commission, specifying various requirements relative to the conduct of business of an athlete agent, and revising the existing remedies and penalties for violation of the Athlete Agents Law.

***Ohio Athletic Commission***

The bill specifies that of the five voting members appointed to the Ohio Athletic Commission, at least one must be knowledgeable and experienced in high school athletics, at least one must be knowledgeable and experienced in collegiate athletics, one must be knowledgeable and experienced in professional athletics, and two must be knowledgeable in boxing. Under existing law, all five must be knowledgeable in boxing. (Sec. 3773.33(A).)

The member knowledgeable and experienced in college athletics must be appointed to serve a three-year term beginning upon the expiration of the term of the member of the Commission whose term expires on the earliest date after the effective date of the bill. The member who is knowledgeable and experienced in high school athletics must be appointed to serve a three-year term beginning on the expiration of the term of the member of the Commission whose term expires second in time after the effective date of the bill. The member knowledgeable and experienced in professional athletics must be appointed to serve a three-year term beginning on the expiration of the term of the member of the Commission whose term expires third in time after the effective date of the bill. (Section 3.)

***Duties of the Commission added under the bill***

The bill adds the following duties to the Commission's existing duties. The Commission must:

(1) Review the application form of an applicant for registration as an athlete agent;

(2) Issue and renew biennial certificates of registration for an athlete agent pursuant to the bill's provisions;

(3) Maintain records of every athlete agent registered in this state, including the agent's business and residential address, and the date and number of the agent's registration;

(4) Establish an application form to be completed by an individual seeking registration as an athlete agent;

(5) Establish a fee for the registration, and renewal of the registration, of an individual as an athlete agent in an amount necessary to generate sufficient funds to cover the cost of administering and enforcing the Athlete Agents Law;

(6) Adopt rules in accordance with the Administrative Procedure Act to carry out the purposes of the Athlete Agents Law. (Sec. 4771.05(A).)

(7) Deposit all receipts it receives under the Athlete Agents Law into the Occupational Licensing and Regulatory Fund.

Additionally, the bill permits the Commission to employ persons as necessary to administer the Athlete Agents Law and to fix their compensation. These employees must serve in the unclassified status and at the pleasure of the Commission. (Sec. 3773.56.)

***Registration of athlete agents required***

The bill prohibits a person from serving as an athlete agent unless the person holds a current and valid certificate of registration as an athlete agent issued under the bill or one of two different types of temporary certificates provided under the bill (see "***Temporary certificates***" below). Under the bill, whoever violates this provision is guilty of a first degree misdemeanor. (Secs. 4771.06 and 4771.99(A).)

***Registration applications***

Under the bill, each individual who desires to serve as an athlete agent, must first file an application for registration with the Commission. The application must be made on a form prescribed by the Commission and include all the following information:

(1) The name and residential address of the applicant;

(2) The address of the primary location in which the applicant wishes to conduct business as an athlete agent;

(3) The type of business conducted or the occupation held by the applicant during the five years immediately preceding application;

(4) The location and evidence of a trust fund established in accordance with requirements under the bill and rules adopted by the Commission (see "***Trust fund or similar depository account requirements***" below);

(5) The names and addresses of all persons who have a financial interest in the business operation of the applicant, or who are compensated for the solicitation or recruitment of athletes on behalf of the applicant, except for salaried employees who receive no commission or bonus pursuant to any agent or professional sports services contract;

(6) Any other information deemed necessary by the Commission. (Sec. 4771.07(A).)

Additionally, the bill requires that an application for registration be accompanied by an application fee in an amount determined by the Commission and an affidavit or certificate of completion describing all formal training or practical experience completed by the applicant in any of the following areas: (1) contracts, (2) contract negotiations, (3) complaint resolution, (4) arbitration, and (5) dispute resolution. An attorney admitted to practice law in this state must submit with the application, a certificate of good standing issued by the Supreme Court of Ohio in lieu of an affidavit or certificate described above. The bill also requires the applicant to submit proof of financial security requirements imposed under the Athlete Agents Law. (See "***Surety or other security requirements for athlete agents***," below.) (Sec. 4771.07(B) and (C).)

The bill requires an athlete agent to notify the Commission of any change in business location or address during the period of application for registration or during the time the registration of the athlete agent is valid (sec. 4771.07(D)).

The bill requires the Commission to receive and review applications for the registration of athlete agents. Upon receipt of an application for registration, the Commission must evaluate the information provided and issue a certificate of registration to the applicant unless the Commission finds that the applicant or an employee or representative of the applicant has committed any of the acts prohibited by the Athlete Agents Law. (See "***Refusal, suspension, revocation***," below.) (Sec. 4771.08(A).)

The bill specifically states that the Commission is not liable for the acts of an athlete agent who is registered with the Commission (sec. 4771.08(F)).

***Certificates***

***Content information***

The bill requires each certificate of registration issued by the Commission to an athlete agent to contain all the following information:

(1) The name of the athlete agent;

(2) The address of a primary location in which the athlete agent is authorized to conduct business as an athlete agent;

(3) A registration number for the athlete agent and the date of issuance of the registration. (Sec. 4771.08(D).)

***Nontransferable***

Under the bill, no registration or certificate of registration is valid for any individual other than the athlete agent to whom it is issued (sec. 4771.08(E)).

***Renewal***

The bill makes registration of an athlete agent with the Commission valid for a period of two years after the date the Commission issues the certificate of registration. An athlete agent must file an application for the renewal of a registration with the Commission at least 30 days prior to the expiration of the registration of the athlete agent, and accompany that application with a renewal fee in an amount determined by the Commission. (Sec. 4771.08(C).)

***Refusal, suspension, revocation***

The bill permits the Commission to refuse to grant or renew a registration, or suspend or revoke a registration of an athlete agent upon proof satisfactory to the Commission that the athlete agent or an employee or representative of the athlete agent has done any of the following:

(1) Made false or misleading statements of a material nature in an application for registration as an athlete agent;

(2) Been convicted of or pleaded guilty to an offense in connection with the person's service as an athlete agent in this or another state;

(3) Been convicted of or pleaded guilty to an offense involving illegal gambling;

(4) Engaged in conduct that has a significant adverse impact on the applicant's credibility, integrity, or competence to serve in a fiduciary capacity;

(5) Misappropriated funds or engaged in other specific conduct that would render the applicant unfit to serve in a fiduciary capacity, including being convicted of or pleading guilty to offenses involving embezzlement, theft, or fraud;

(6) Violated a provision of the Athlete Agents Law or a rule adopted under that law. (Sec. 4771.18(A).)

***Investigations***

Upon receiving a complaint of a violation of the Athlete Agents Law or a rule adopted under it, under the bill, the Commission must conduct an investigation of the complaint. If the Commission finds reasonable cause to believe a violation occurred, the Commission must conduct a hearing in accordance with the Administrative Procedure Act to determine if a violation occurred. If the Commission finds a violation occurred, the Commission may suspend or revoke, or refuse to issue or renew, the registration of an athlete agent for such period of time as the Commission finds appropriate.

Upon completion of an investigation, if the Commission finds no reasonable grounds to believe a violation occurred, the Commission must certify without a hearing, that no violation occurred. The Commission must serve the certification on all parties addressed in the complaint by certified mail, with return receipt requested. The certification must be considered a final resolution of the matter if no objection to the certification is filed. A party involved in the complaint may file an objection to the certification with the Commission within ten days after the date the certification is mailed. If a party files an objection to the certification within the prescribed period, the Commission, within its discretion, may conduct a hearing in accordance with the Administrative Procedure Act to determine if a violation occurred. (Sec. 4771.18(B).)

***Temporary certificates***

Under the bill, the Commission may issue a temporary certificate of registration, effective for a period up to 90 days after the issuance of the temporary registration, to an athlete agent who is registered as an athlete agent in another state, or to a person who has not submitted all the required material, but who the Commission determines to have submitted sufficient material to warrant the issuance of a temporary certificate (sec. 4771.08(B)).

***Certificate of convenience***

The Commission is permitted under the bill to issue to an eligible person a certificate of convenience to conduct business as an athlete agent when a registered athlete agent is deceased, or declared incompetent or physically infirm by the judgment of a court of competent jurisdiction. The Commission may issue a certificate of convenience upon either receiving approval to do so from a probate court or finding that the last will and testament of the athlete agent specifically

authorizes the executor or administrator of the estate to conduct the business of the athlete agent. (Sec. 4771.09(A).)

The following persons are eligible to obtain a certificate of convenience to conduct business on behalf of an athlete agent:

(1) The executor or administrator of the estate of the deceased athlete agent;

(2) The guardian of the estate of an athlete agent who has been declared incompetent or the conservator appointed to manage the estate of an athlete agent who has been declared physically infirm. (Sec. 4771.09(B).)

A certificate of convenience is valid for 90 days after the date it is issued. If the holder of a certificate of convenience applies for registration as an athlete agent, the Commission may renew the certificate of convenience for a period of time the Commission finds appropriate pending the Commission's determination whether to issue a certificate of registration as an athlete agent to the holder of the certificate of convenience. (Sec. 4771.09(C).)

***Continuing education requirements***

The bill permits the Commission to require each registered athlete agent to complete not more than six hours of continuing education during a biennial registration in programs to be determined or approved by the Commission. If the Commission imposes continuing education requirements on athlete agents, not less than two of the six hours of continuing education must be devoted to ethics.

A continuing education program must promote the ability of an athlete agent to serve as an athlete agent in an ethical and legal manner. Continuing education courses may address laws and rules governing athlete agents and rules and policies established by an athletic conference or a collegiate athletic organization. An athlete agent also may obtain credit for continuing education by participating in or attending lectures, courses at institutions of higher education, seminars, or rule making or disciplinary proceedings approved by the Commission, or by teaching a subject that pertains to the profession of an athlete agent. If the Commission requires athlete agents to fulfill continuing education requirements, it must adopt rules to carry out those purposes. The rules must contain procedures by which the Commission must monitor an athlete agent's compliance with the continuing education requirements prior to renewal of registration. (Sec. 4771.10.)

***Agent contract requirements***

Existing law prohibits an athlete agent from entering into an agent contract with a student athlete unless the agent complies with both of the following:

(1) The agent contract is in writing and includes all agreements between the parties;

(2) Not less than 14 days before entering into an agent contract with a student athlete, the athlete agent files a copy of the proposed contract with the official who is responsible for the supervision of the particular sport program at the institution of higher education at which the student athlete who is a participant in the program is enrolled. (Sec. 4771.02.)

Under existing law, whoever violates the agent contract requirements described above is guilty of a misdemeanor of the first degree. (Sec. 4771.99.)

The bill modifies these agent contract requirements and eliminates the associated penalty. Under the bill, an athlete agent is prohibited from entering into an agent contract with an athlete unless the agent complies with all of the following agent contract requirements:

(1) The agent contract is in writing on a form approved by the Commission and includes all agreements between the parties;

(2) The agent contract includes in boldface, 12-point type, on the initial page of the agent contract, the following language:

> "*The athlete agent entering this agreement is registered to serve as an athlete agent with the Ohio athletic commission. Registration of an athlete agent under Chapter 4771. of the Revised Code does not imply approval by the commission of the terms and conditions of this contract or the competence of the athlete agent*."

(3) The agent contract includes the following language in boldface, 12-point type, near the space provided for an athlete to sign or otherwise acknowledge agreement to the terms of the contract:

> "*Warning to the student athlete: When you sign this contract you may immediately lose your eligibility to compete in any amateur or intercollegiate athletics. Accordingly you must give written notice that you have entered into this contract to the athletic director or person of similar position at the educational institution or institution of higher education in which you are enrolled or to which you have formally acknowledged your plans to attend, prior to the*

*earlier of participating in or practicing for an officially sanctioned athletic competition or intercollegiate athletic event, or seventy-two hours after entering into this contract.*

*Do not sign this contract until you have read it and filled in any blank spaces. Under Ohio law, as a student athlete signing this contract, you have the right to rescind this contract for a period up to ten days after the latest of the following occurrences:*

*(a) The date the contract is signed;*

*(b) The date the athletic director or person of similar position at the educational institution or institution of higher education in which you are enrolled or have acknowledged plans to attend, receives notice of this contract; or*

*(c) The last date you participate in an officially sanctioned athletic competition or intercollegiate athletic event if no notice of this contract is provided to the athletic director or person of similar position.*

*Despite cancellation of this contract, the educational institution, institution of higher education, or intercollegiate athletic association or conference to which your institution of higher education belongs may not restore your eligibility to participate in amateur or intercollegiate athletics. If you sign this contract prior to the last officially sanctioned athletic competition or intercollegiate athletic event you participate in and fail to notify your institution of this contract, your athletic team may be required to forfeit all games in which you participated after signing. Such action also may cause your athletic team to be declared ineligible for post-season play*."

(4) The athlete agent agrees in the agent contract to provide written notice of the agent contract to the athletic director or person of similar position at the educational institution or institution of higher education in which the athlete is enrolled prior to the earlier of the time the athlete next participates in or practices for an officially sanctioned athletic competition or intercollegiate athletic event after entering (into) that contract, or 72 hours after the time the athlete agent and athlete enter into the agent contract.

(5) All terms and conditions contained in the agent contract comply with state and federal law. (Sec. 4771.02(A).)

***Contract provisions relative to arbitration***

The bill further specifies that a provision in an agent contract that provides for the resolution of any controversy in connection with the contract by arbitration is void and unenforceable unless both of the following apply:

(1) The provision is contained in an agent contract between an athlete agent and an athlete for whom the athlete agent undertakes to secure employment;

(2) The provision is included in the agent contract pursuant to a rule, regulation, or contract of a bona fide labor union or organization that regulates the relations of its members with athlete agents. (Sec. 4771.02(B).)

***Written notice of contract to athletic director***

The bill requires both an athlete and athlete agent who enter an agent contract to provide written notice of the agent contract to the athletic director or person of similar position at the educational institution or institution of higher education in which the athlete is enrolled prior to the earlier of the time the athlete participates in or practices for, an officially sanctioned athletic competition or intercollegiate athletic event, or 72 hours after the time the athlete agent and athlete enter into the agent contract. (Sec. 4771.02(C).)

Under the bill, an athlete agent who fails to provide the written notice as required is guilty of a misdemeanor of the first degree. (Sec. 4771.99(B).)

***Surety or other security required for athlete agents***

Prior to issuing a certificate of registration, under the bill, the Commission must require an athlete agent to submit proof of one of the following securities:

(1) A surety bond in the amount of $15,000 in favor of this state for the benefit of any person that is injured by a violation of the Athlete Agents Law or rules adopted under that law;

(2) A certificate of deposit in favor of, or a savings account assigned to, the state of Ohio for the benefit of any person that is injured by a violation of the Athlete Agents Law or rules adopted under that law, in the amount of $15,000;

(3) Certification from an insurance carrier indicating that the athlete agent has obtained professional malpractice insurance in an amount equal to, or greater than, $50,000, or a lesser amount, as permitted by the Commission.

An athlete agent must present evidence of a bond, certificate of deposit, assigned savings account, or professional malpractice insurance in the manner prescribed by the Commission. (Sec. 4771.11(A).)

The Commission must hold on deposit, as an agent of the state, any surety bond or other form of security deposited with the Commission by an athlete agent. The Commission must hold the security in trust contingent on an athlete agent's compliance with all provisions of the Athlete Agents Law, including the payment of all moneys owed to an athlete, group of athletes, educational institution, or institution of higher education, and the payment of all damages due as the result of a misstatement, misrepresentation, fraudulent act, deceit, or unlawful or negligent act or omission by an athlete agent in the course of serving as an athlete agent, or by a representative or employee of an athlete agent when the representative or employee acted within the scope of the representative's or employee's authority. The Commission may use funds held on deposit for an athlete agent to pay debts owed by an athlete agent pursuant to a court or administrative order specifying the obligation of the athlete agent. (Sec. 4771.11(B).)

The bill specifies that nothing in the above-described provision is to be construed to limit the liability of an athlete agent to the amount of the surety bond, malpractice coverage, or other security held on deposit by the Commission (sec. 4771.11(C)).

Under the bill, an athlete agent must maintain the security described above. If an athlete agent fails to maintain the security, the Commission must suspend the registration of the athlete agent until the athlete agent provides evidence of the required bond, certificate of deposit, assigned savings account, or malpractice insurance as required under the bill. (Sec. 4771.11(D).)

The bill provides that the liability of the surety on the bond may not exceed $15,000 in the aggregate for all persons who are injured by any and all violations of the Athlete Agents Law or the rules adopted under it. Furthermore, the bill allows a surety to cancel a bond after mailing a written notice to the athlete agent and the Commission stating that the bond cancels 60 days after the notice is mailed. The liability of the surety for acts of the athlete agent continues during that 60-day period. The cancellation notice does not absolve the surety from liability that accrues before the cancellation date but that is discovered after that date. (Sec. 4771.11(E) and (F).)

The Commission must return the surety bond or other form of security held by the Commission to the athlete agent submitting the bond or security, two years after the person ceases to serve as an athlete agent in this state (sec. 4771.11(G)).

***Trust fund or similar depository account requirements***

An athlete agent is required by the bill to establish an interest bearing trust fund or similar account in a depository approved by the Commission to be used for the deposit of all revenues received on behalf of an athlete. An athlete agent must deposit any revenue received on behalf of an athlete in the interest bearing trust fund or account. The athlete agent must notify the Commission of the address and location of the trust fund or account and the depository in which it is located.

An athlete agent who is an attorney licensed to practice law in this state, in lieu of the forgoing requirement, may deposit any revenue received on behalf of an athlete in a trust account already maintained by the agent attorney in a financial institution in this state for the deposit of revenue received on behalf of clients. (Sec. 4771.12(B).)

***Requirements concerning athlete agent fees***

The bill specifies that fees charged by an athlete agent for services provided to an athlete may be negotiated between the parties (sec. 4771.12(A)).

The bill prohibits an athlete agent from sharing fees with any person other than an employee of the athlete agent. If an athlete agent shares a fee with an employee, the athlete agent must obtain written consent from the athlete prior to entering a fee agreement with the athlete. Athlete agents are prohibited from entering fee agreements that are prohibited under the Athlete Agents Law. (Sec. 4771.12(C).)

If an athlete agent collects a fee or expense from an athlete as consideration for obtaining employment for the athlete, and the athlete agent fails to procure such employment, under the bill, the agent must retain only the following portion of the fee or expense:

(1) The cost of reasonable expenses incurred by the athlete agent during the course of representing the athlete in efforts to obtain employment for the athlete;

(2) A negotiated fee in connection with instances where the athlete receives a bonus or some compensation for signing a professional sports services contract. (Sec. 4771.12(D).)

The bill specifies that nothing in the aforementioned provision can be construed to limit the authority of the Ohio Supreme Court to establish or regulate fees for activities considered to be the practice of law (sec. 4771.12(E)).

***Investment related issues***

An athlete agent is prohibited under the bill from acting on behalf of an athlete as a "dealer" or "investment advisor," as defined in the Securities Law (R.C. Chapter 1707.), unless the athlete agent complies with that law (sec. 4771.13).

The bill requires an athlete agent to disclose to an athlete and the Commission any ownership interest the athlete agent has in an entity referred to by the athlete agent in advising the athlete concerning investments. An athlete agent must disclose any commissions or fees the athlete agent may receive as a result of an investment decision made by an athlete in response to investment advice from the athlete agent. (Sec. 4771.13.)

***Advertisements***

The bill prohibits an athlete agent from publishing or causing to be published any false, fraudulent, or misleading notice, advertisement, or information with knowledge that it is false, fraudulent, or misleading. All advertisements of an athlete agent must contain the name and registered business address of the athlete agent and some indication that the athlete agent is registered with the Commission.

As used in this provision, "advertisement" includes circulars, signs, newspaper or magazine publications, or other oral or written communication that names the athlete agent in connection with the provision of services as an athlete agent. (Sec. 4771.16.)

***Record keeping requirements***

An athlete agent is required by the bill to maintain all of the following records:

(1) The name and address of each athlete for whom the athlete agent performs services as an athlete agent in exchange for compensation;

(2) The amount of fees or compensation received for the performance of services for each athlete;

(3) A copy of the contract entered into between the athlete agent and each athlete;

(4) Any other information the Commission finds appropriate in connection with the provision of services by an athlete agent. (Sec. 4771.14(A).)

An athlete agent must maintain all the records described above in a manner that the Commission must prescribe, for a period of five years. (Sec. 4771.14(B).)

The bill prohibits an athlete agent or an employee or representative of an athlete agent from making, or causing to be made, any false records or records containing false information (sec. 4771.14(C)).

All financial records, financial books, and all other records not subject to the attorney-client privilege that are required to be maintained pursuant to the Athlete Agents Law must be open to inspection by the Commission and its representatives, upon reasonable notice, at the pleasure of the Commission (sec. 4771.14(D)).

***Permissible activities of an athlete agent***

The bill specifies that an athlete agent may engage in the following conduct:

(1) Provide or send written materials to an athlete if the athlete agent simultaneously submits an identical copy of the materials to the athletic director or designee, or person of similar position, at the educational institution or institution of higher education in which the athlete is enrolled, or to the institution of higher education to which the athlete provided a written notice of intent to participate in intercollegiate athletics;

(2) Contact an athlete after an athlete initiates contact with an athlete agent, provided that the athlete agent provides notice, in accordance with the Athlete Agents Law, to the educational institution or the institution of higher education in which the athlete is enrolled or the institution of higher education to which the athlete has provided a written notice of intent to participate in intercollegiate athletics;

(3) Participate in educational programs sponsored by an institution of higher education or a professional sports counseling panel at an institution of higher education. (Sec. 4771.15.)

***Prohibitions applicable to athlete agents***

The bill prohibits an athlete agent from doing any of the following:

(1) Providing false information or making false promises or representations concerning the employment of an athlete;

(2) Engaging in any conduct that demonstrates bad faith or dishonesty in connection with the performance of services as an athlete agent;

(3) Commingling money or property of an athlete with the agent's own money or property;

(4) Offering anything of value to a person in order to induce an athlete to enter into an agreement pursuant to which the athlete agent represents the interests of the athlete;

(5) Engaging in reckless or intentional mismanagement or misconduct as an athlete agent where such conduct results in financial harm to an athlete or an educational institution or institution of higher education;

(6) Violating the rules of the athletic conference or collegiate athletic association governing an athlete or the educational institution or institution of higher education in which an athlete is enrolled when the violation may affect the eligibility of the athlete to participate in athletic competition or otherwise penalize the educational institution or institution of higher education;

(7) Aiding or abetting another in conduct that violates the rules of the athletic conference or collegiate athletic association governing an athlete or the educational institution or institution of higher education in which the athlete is enrolled, when the violation results in the ineligibility of the athlete to participate in athletic competition or otherwise penalizes the educational institution or institution of higher education;

(8) Making any contact with an athlete that is prohibited under the Athlete Agents Law, other state or federal law, or the rules of any athletic conference or collegiate athletic association;

(9) Post-dating an agent or professional sports services contract;

(10) Loaning or advancing money to an athlete or the family or friends of an athlete in connection with the recruitment or solicitation of the athlete;

(11) Providing transportation, material goods, or any other services to an athlete, or family or friends of an athlete, in connection with the recruitment or solicitation of an athlete;

(12) Publishing or causing to be published any false or misleading information or advertisements concerning the athlete agent, an athlete, or the provision of services by an athlete agent. (Sec. 4771.17.)

Under the bill, whoever violates (10) or (11), above, is guilty of a misdemeanor of the first degree (sec. 4771.99(A)).

***Remedies for violations***

Current law authorizes the Attorney General, under specified conditions, to bring an action to obtain a temporary restraining order, preliminary injunction, or permanent injunction to restrain a violation of the Athlete Agents Law. The court may impose a civil penalty of not more than $10,000 against an athlete agent. (Sec. 4771.05, repealed by the bill.)

Additionally, a court may exercise personal jurisdiction over an athlete agent who resides or engages in business outside Ohio as to a cause of action arising from the athlete agent entering into an agent contract with a student athlete outside Ohio without complying with the agent contract requirements of current law (sec. 4771.06, repealed by the bill).

The bill abolishes these existing remedy provisions of the Athlete Agents Law and establishes the following provisions instead. The bill specifies that a person who is injured by a violation of the Athlete Agents Law may initiate a civil action for legal and equitable relief against an athlete agent in a court having jurisdiction over the matter. The plaintiff also may name the surety, the named holder of any security required of an athlete agent under the Athlete Agents Law, or the carrier of malpractice insurance for an athlete agent as additional parties to the action. This cause of action may be transferred or assigned in the same manner as prescribed for civil actions under Ohio law. The amount of damages claimed by the plaintiff, and not the amount of bond, security, or insurance held in the name of an athlete agent, determines the jurisdiction of the court in which the action is brought. A court is not allowed to award punitive or exemplary damages against a surety in this type of action. (Sec. 4771.19.)

***Remedies specific to institutions of higher education***

Under the bill, an institution of higher education may bring a civil action against an athlete agent who violates the Athlete Agents Law for compensatory damages, punitive or exemplary damages, and equitable relief as the court finds appropriate. A court may grant equitable relief to a plaintiff under this provision to prevent harm that could result from the acts or omissions of an athlete or athlete agent if the court finds a reasonable likelihood that a violation occurred. (Sec. 4771.20(A).)

For purposes of this provision, an institution of higher education suffers harm when, as the result of the acts of an athlete agent or an athlete, both of the following occur:

(1) The institution or an athlete enrolled at the institution is penalized or is declared ineligible to compete in intercollegiate athletics by a national association

that promotes or regulates intercollegiate athletics or by an intercollegiate athletic conference.

(2) As a result of the penalty or declaration of ineligibility, the institution of higher education experiences any of the following:

- A loss of the ability to grant an athletic scholarship;
- A loss of the ability to recruit an athlete;
- A loss of eligibility to participate in intercollegiate competition;
- A loss of eligibility to participate in post-season athletic competition;
- A forfeiture of any athletic contest;
- An adverse financial impact including, but not limited to, lost revenue from media coverage of athletic competition or lost ticket sales. (Sec. 4771.120(B).)

An institution of higher education that prevails in an action may recover compensatory and punitive or exemplary damages. A court also may award court costs and reasonable attorney's fees to a prevailing plaintiff. However, a court is not allowed to award punitive or exemplary damages against a surety. (Sec. 4771.20(C) and (D).)

***Jurisdiction and service of process***

The bill specifies that an agent contract entered into in this state or an agent contract entered with an athlete who is enrolled in an educational institution or institution of higher education located in this state is governed by Ohio law (sec. 4771.04).

The bill specifies that any person who conducts business in this state as an athlete agent consents to the jurisdiction of the courts of this state, whether or not the person is registered as an athlete agent with the Commission.

If an athlete agent conducts business in this state and thereafter leaves this state with intent to defraud creditors or to avoid service of process in an action brought under the Athlete Agents Law, the athlete agent thereby makes the Secretary of State of this state the agent of the athlete agent for purposes of service of process in any civil action or proceeding instituted in the courts of this state against the athlete agent arising out of, or by reason of, the athlete agent's conduct within this state. This appointment is irrevocable.

This process must be served by the officer to whom the same is directed, or by the sheriff of Franklin County, upon the Secretary of State by leaving the process and a true and attested copy thereof at the office of the Secretary of State, at least 15 days before the return day of such process, and by sending to the defendant, at the defendant's last known address, by registered mail, postage prepaid, a like true and attested copy of the process, with an indorsement thereon of the service upon the Secretary of State. The registered mail return receipt of the defendant must be attached to and made a part of the return of service of such process. (Sec. 4771.21.)

***Definitions***

The bill modifies existing definitions and creates new definitions for purposes of the Athlete Agents Law. The bill modifies existing definitions as explained below.

Under existing law, "agent contract" means any contract or agreement pursuant to which a student athlete authorizes or empowers or agrees to authorize or empower at some later date a person to negotiate or solicit any professional sport services contract on behalf of the athlete. If a student athlete also engages in a nonintercollegiate sporting event, contest, exhibition, or program, "agent contract" does not include any contract or agreement described above if the athlete agent negotiates or solicits any professional sport services contract on behalf of the athlete in the nonintercollegiate sport in which the athlete engages.

Under the bill, an "agent contract" means any contract or agreement pursuant to which an athlete authorizes or empowers or agrees to authorize or empower at some later date an athlete agent to do any of the following:

(1) Negotiate or solicit an agreement on behalf of the athlete with one or more professional sports teams for the employment of the athlete by a professional sports team;

(2) Negotiate or solicit an agreement on behalf of the athlete for the employment of the athlete as a professional athlete;

(3) Market, or enter an agreement to market, an athlete or an athlete's reputation. (Sec. 4771.01(A).)

Under existing law, "athlete agent" means any person who offers an agent contract to, or enters into an agent contract with, a student athlete. Under the bill, "athlete agent" means any person who directly or indirectly, recruits or solicits any athlete to enter into an agent contract or professional sports services contract, or who for a fee, procures, offers, promises, or attempts to obtain employment for an

athlete with a professional sports team, or as a professional athlete, or otherwise attempts to market an athlete or an athlete's reputation. (Sec. 4771.01(B).)

Under existing law (unchanged by the bill) "athlete agent" does not include either of the following:

(1) A member of a student athlete's immediate family;

(2) An attorney from whom a student athlete seeks legal advice concerning a proposed professional sport services contract if the attorney does not represent the student athlete in negotiating or soliciting the contract.

Existing law defines a "student athlete" as any individual who is enrolled as a student at an institution of higher education in this state and engages in any intercollegiate sporting event, contest, exhibition, or program. The bill eliminates this definition and instead defines an "athlete" as either of the following:

(1) A student enrolled in any educational institution or institution of higher education in this state, who participates, or is or may become eligible to participate, in any athletic sporting event, contest, exhibition, or program at the educational institution or institution of higher education;

(2) A student who meets one of the following criteria:

- Resides in this state, is eligible to participate in an amateur athletic program, and has informed an educational institution or institution of higher education, in writing, of the student's intent to participate in that institution's amateur athletic program;

- Does not reside in this state but is eligible to participate in an amateur athletic program and has informed, in writing, an educational institution or institution of higher education in this state of the student's intent to participate in that institution's amateur athletic program. (Sec. 4771.01(D).)

Existing law defines a "professional sports services contract" to mean any contract or agreement pursuant to which an individual is employed or agrees to render services as a player on a professional sports team or as a professional athlete. This definition is modified by the bill so that it specifically applies to an "athlete" instead of an *individual*. This definition is also expanded by the bill so that it also includes any contract or agreement that "provides for the present or future marketing of an athlete or athlete's reputation." (Sec. 4771.01(F).)

The bill adds the definition of "educational institution" which means any institution located in this state, public or private, that provides elementary or secondary education to students as its primary function. (Sec. 4771.01(H).)

## HISTORY

| ACTION | DATE | JOURNAL ENTRY |
|---|---|---|
| Introduced | 01-28-99 | p. 120 |
| Reported, H. Commerce and Labor | 09-19-00 | p. 2257 |
| Passed House (95, 1) | 09-20-00 | p. 2268 |

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