SENATE BILL 1671
By Tracy

HOUSE BILL 1947

By Carr

AN ACT to amend Tennessee Code Annotated, Title 49, Chapter 7, Part 21, relative to athlete agents.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 49-7-2122, is amended by deleting the section in its entirety and by substituting instead the following:

49-7-2122.

This part shall be known and may be cited as the "Athlete Agent Reform Act of 2011".

SECTION 2. Tennessee Code Annotated, Section 49-7-2123(2), is amended by deleting the subdivision in its entirety and by substituting instead the following language:

(2)

(A) "Athlete agent" means an individual who enters into an agency contract with a student athlete or, directly or indirectly, recruits or solicits a student athlete to enter into an agency contract, or, for compensation or for anything of value, procures, offers, promises, negotiates, or attempts to procure, offer, promise, or negotiate on behalf of a student-athlete, employment with a professional sports team or organization as a professional athlete or enrollment at any college, university, community or junior college that offers an athletic scholarship to the student athlete;

(B) "Athlete agent" includes, but is not limited to, actual agents; individuals commonly referred to as runners; managers; marketing representatives; financial advisors; and employees, independent contractors, or other persons acting on behalf of an athlete agent who participate in the activities included under this subdivision (2) and also includes an individual who:

(i) Is authorized by a student-athlete to enter into an agreement;

(ii) Works for or on behalf of an athlete agent; or

(iii) Represents to the public that he or she is an athlete agent;

(C) “Athlete agent” does not include a spouse, parent, sibling, grandparent or guardian of the student-athlete or individual acting solely on behalf of a professional sports team, professional sports organization or educational institution, unless that individual offers, solicits for himself or herself, solicits on the student- athlete’s behalf, or solicits on behalf of the student-athlete’s family or friends any form of a financial benefit or gift not allowed by the regulations or bylaws of National Collegiate Athletic Association as they existed on January 1, 2011;

SECTION 3. Tennessee Code Annotated, Section 49-7-2123, is amended by adding the following language as a new subdivision (6) and by renumbering subsequent subdivisions accordingly:

(6) “Family” means any person related to a student athlete by blood, marriage, or adoption;

SECTION 4. Tennessee Code Annotated, Section 49-7-2124, is amended by deleting the section in its entirety and by substituting instead the following language:

49-7-2124.

(a) The secretary of state shall administer this part.

(b) A person, resident or nonresident, who does business in this state as an athlete agent, regardless of whether such person is registered pursuant to this part, shall:

(1) By so doing, consent to the jurisdiction of the courts of this state;

(2) Be subject to suit in this state; and

(3) Be deemed to have appointed the secretary of state as such person's agent to accept service of process in any civil action related to such person doing business as an athlete agent that is commenced against such person in this state.

(c) The secretary of state may:

(1) Conduct public or private investigations, within or outside of this state, which the secretary deems necessary or appropriate to determine whether a person has violated, is violating, or is about to violate this part or a rule adopted under this part, or to aid in the enforcement of this part or in the adoption of rules and forms under this part;

(2) Require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the secretary determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted; and

(3) Publish a record concerning an action, proceeding, or an investigation under, or a violation of, this part or a rule adopted under this part, if the secretary determines it is necessary or appropriate in the public interest.

(d) For purposes of an investigation under this chapter, the secretary or the secretary's designee may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of

statements, and require the production of any records that the secretary considers relevant or material to the investigation.

SECTION 5. Tennessee Code Annotated, Section 49-7-2125, is amended by deleting subsection (b) and by substituting instead the following language:

(b) Before being issued a certificate of registration, an individual may act as an athlete agent for all purposes except signing an agency contract if, within seven (7) days after an initial act as an athlete agent, the individual submits an application to register as an athlete agent in this state.

(c) An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract to the individual or entity who tendered or paid the consideration.

SECTION 6. Tennessee Code Annotated, Section 49-7-2126(a), is amended by deleting subdivision (9) and by substituting instead the following language:

(9) Whether there has been any administrative or judicial determination by any certifying organization or governmental entity that the applicant or any person named pursuant to subdivision (a)(7) has made a false, misleading, deceptive or fraudulent representation;

SECTION 7. Tennessee Code Annotated, Section 49-7-2126, is amended by adding the following language as a new subsection thereto:

(c) An athlete agent must notify the secretary of state within thirty (30) days whenever the information contained in any application for registration as an athlete agent in this state changes in a material way or becomes inaccurate or incomplete in any respect. Events requiring notice shall include, but are not limited to, the following:

(1) Change in address of athlete agent's principal place of business;

(2) Conviction of a felony or any other crime involving moral turpitude by the athlete agent;

(3) Denial, suspension, refusal to renew, or revocation of a registration, certification, or license of the athlete agent as an athlete agent in any state or by any certifying organization; or

(4) Sanction, suspension, or other disciplinary action taken against the athlete agent arising out of occupational or professional conduct.

SECTION 8. Tennessee Code Annotated, Section 49-7-2128(a), is amended by deleting the word "The" and the beginning of the subsection and substituting the language “After proper notice and an opportunity for hearing, the".

SECTION 9. Tennessee Code Annotated, Section 49-7-2132, is amended by deleting the section in its entirety and by substituting instead the following:

(a)

(1) Before an athlete agent, or their agent's employee or representative, may initiate first direct or indirect contact with any of the following individuals, with the intent or for the purpose of soliciting the student-athlete or procuring employment from the student-athlete, the athlete agent or their agent's employee or representative shall provide the athletic director of the educational institution at which the student-athlete is enrolled with written notification forty-eight (48) hours prior to the planned contact with such individual or individuals:

(A) The student athlete;

(B) The student athlete’s spouse, or the parent, foster parent, guardian, sibling, aunt, uncle, grandparent, child, or first cousin of the student athlete or the student athlete’s spouse; or

(C) A representative of any of the individuals in subdivisions (a)(1)(A) and (B).

(2) A copy of the notice required pursuant to subdivision (a)(1) shall be provided to the educational institution's general counsel.

(3) If the educational institution does not have an athletic director, the notice required pursuant to subdivision (a)(1) shall be given to the educational institution's general counsel, if known, or to the president of the educational institution.

(b)

(1) Within forty-eight (48) hours after entering into an agency contract or verbally agreeing to enter 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 written notice of the existence of the contract or verbal agreement 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) A copy of the notice required pursuant to subdivision (a)(1) shall be provided to the educational institution's general counsel.

(3) If the educational institution does not have an athletic director, the notice required pursuant to subdivision (a)(1) shall be given to the educational institution's general counsel, if known, or to the president of the educational institution.

(c)

(1) Within forty-eight (48) hours after entering into an agency contract or verbally agreeing to enter into an agency contract, or before the next athletic

event in which the student-athlete may participate, whichever occurs first, the student-athlete shall give written notice to the athletic director or the educational institution at which the student-athlete is enrolled that the student-athlete has entered into an agency contract or has verbally agreed to enter into an agency contract.

(2) A copy of the notice required pursuant to subdivision (c)(1) shall be provided to the educational institution's general counsel.

(3) If the educational institution does not have an athletic director, the notice required pursuant to subdivision (c)(1) shall be given to the educational institution's general counsel, if known, or to the president of the educational institution.

(d) Failure by the student-athlete to provide the notification required pursuant to subsection (c) may subject the student-athlete to disciplinary action in accordance with the educational institution's rules and regulations for student conduct.

SECTION 10. Tennessee Code Annotated, Section 49-7-2135(b), is amended by adding the following language as a new subdivision (3) and by renumbering the remaining subdivisions accordingly:

(3) Fail to provide to the secretary of state any statements, documents, records, or testimony required by the secretary pursuant to § 49-7-2124 or the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 11. Tennessee Code Annotated, Section 49-7-2136, is amended by deleting the section in its entirety and by substituting instead the following:

49-7-2136. A violation of § 49-7-2135 is a Class D felony punishable by a fine of no more than five thousand dollars ($5,000) or confinement for no less than two (2) years nor more that twelve (12) years, or both.

SECTION 12. Tennessee Code Annotated, Section 49-7-2138, is amended by deleting the language “twenty-five thousand dollars ($25,000)” and substituting instead the language “two hundred fifty thousand dollars ($250,000)”.

SECTION 13. Tennessee Code Annotated, Section 49-7-2141, is amended by deleting the language “the Uniform Athlete Agents Act of 2001” and by substituting instead the language “this part”.

SECTION 14. Tennessee Code Annotated, Title 49, Chapter 7, Part 21, is amended by inserting the following language as a new, appropriately designated section:

49-7-21__.

(a) If the secretary of state determines that a person has engaged in or is engaging in an act, practice, or course of business constituting a violation of this part or a rule adopted or order issued under this part, or that a person has materially aided or is materially aiding in an act, practice, or course of business constituting a violation of this part or a rule adopted or order issued under this part, the secretary of state may:

(1) Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business, or to take other action necessary or appropriate to comply with this part or any rule or order promulgated thereunder;

(2) Issue an order imposing an administrative penalty against an athlete agent who violated this part or any rule or order promulgated thereunder; and

(3) Take any other action permitted under this part.

(b) An order issued under subdivision (a)(1) is effective on the date of issuance by the secretary. Upon issuance of the order, the secretary of state shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement of any civil penalty or other administrative remedy to be imposed under subdivision (a)(1), a statement of the costs

of investigation the secretary of state will seek to recover, a statement of the reasons for the order, and a statement notifying the person of such person's right to a hearing under § 49-7- 2128. If a person subject to the order does not request in writing a hearing within thirty (30) days of the date the order is issued and a hearing is not ordered by the hearing officer, the order, including the imposition of a civil penalty or requirement for payment of the costs of investigation, shall become final as to that person by operation of law.

(c) In a final order, the secretary of state may charge the actual cost of an investigation or proceeding for a violation of this part or a rule adopted or order issued under this part.

(d) If a petition for judicial review of a final order is not filed in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, or the petition is denied by the court, the secretary of state may file a certified copy of the final order with the clerk of a court in the jurisdiction where enforcement will be sought. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

(e) If a person does not comply with an order under issued under this section, the secretary of state may petition a court of competent jurisdiction to enforce the order and collect administrative civil penalties and costs imposed under the final order. The court shall not require the secretary of state to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may grant any relief the court determines is just and proper in the circumstances.

SECTION 15. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 16. This act shall take effect on July 1, 2011, the public welfare requiring it.