SENATE DOCKET, NO. 2664 FILED ON: 12/4/2019

SENATE . . . . . No. 2454

The Commonwealth of Massachusetts

PRESENTED BY:

Barry R. Finegold

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to college athlete compensation.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Barry R. Finegold	*Second Essex and Middlesex*

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SENATE . . . . . No. 2454

By Mr. Finegold, a petition (accompanied by bill, Senate, No. 2454) (subject to Joint Rule 12) of Barry R. Finegold for legislation relative to college athlete compensation. Higher Education.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act relative to college athlete compensation.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 15A of the General Laws, as appearing in the 2018 Official Edition, is hereby amended by adding the following section:-

Section 45 (a) A public or private institution of higher education, hereinafter referred to as an "institution", shall not uphold any rule, requirement, standard or other limitation that prevents a student of that institution participating in intercollegiate athletics from earning compensation as a result of the use of the student's name, image or likeness. Earning compensation from the use of a student's name, image or likeness shall not affect the student's scholarship eligibility. For the purposes of this section, a public or private institution of higher education shall include a community college.

(b) An athletic association, conference or other group or organization with authority over intercollegiate athletics, including, but not limited to, the National Collegiate Athletic

Association, shall not prevent a student of an institution participating in intercollegiate athletics from earning compensation as a result of the use of the student's name, image or likeness.

(c) An athletic association, conference or other group or organization with authority over intercollegiate athletics, including, but not limited to, the National Collegiate Athletic Association, shall not prevent an institution from participating in intercollegiate athletics.

(d) An institution, athletic association, conference or other group or organization with authority over intercollegiate athletics shall not provide a prospective student-athlete with compensation in relation to the athlete's name, image or likeness.

(e) An institution, athletic association, conference or other group or organization with authority over intercollegiate athletics shall not prevent a student-athlete participating in intercollegiate athletics from obtaining professional representation in relation to contracts or legal matters, including, but not limited to, representation provided by athlete agents or legal representation provided by attorneys.

(f) Professional representation obtained by student-athletes shall be from persons complying with or registered in the commonwealth pursuant to section 32 of chapter 9.

(g) Athlete agents representing student-athletes shall comply with the federal Sports Agent Responsibility and Trust Act, established in chapter 104 of title 15 of the United States Code, in their relationships with student-athletes.

(h) A scholarship from the institution at which a student is enrolled that provides the student with the cost of attendance at that institution is not compensation for the purposes of this

section. A scholarship shall not be revoked as a result of earning compensation or obtaining athlete agent or legal representation pursuant to this section.

(i) A student-athlete shall not enter into a contract or agreement providing compensation to the athlete for use of the athlete's name, image or likeness if a provision of the contract or agreement is in conflict with a provision of the athlete's team contract. An institution asserting such a conflict shall disclose to the athlete or the athlete's legal representation the relevant contractual provisions that are in conflict. A student-athlete who enters into a contract or agreement providing compensation to the athlete for use of the athlete's name, image or likeness shall disclose the contract or agreement to an official of the institution, to be designated by the institution.

(j) A team contract of an institution's athletic program shall not prevent a student-athlete from using the athlete's name, image or likeness for a commercial purpose when the athlete is not engaged in official team activities. This provision shall apply only to contracts entered into, modified, or renewed on or after the enactment of this section.

(k) Each institution shall establish a catastrophic sports injury fund to provide a student-athlete who suffers a career ending or long-term catastrophic sports injury during an intercollegiate athletic competition or practice with compensation upon his or her graduation. The amount of such compensation and qualifying injuries shall be determined by the Board of Higher Education. A qualifying injury shall be verified by an independent health care provider not affiliated with the institution at which the injured student-athlete participated in intercollegiate athletics.

SECTION 2. Chapter 9 of the General Laws, as so appearing, is hereby amended by adding the following section:-

Section 32. (a) For the purposes of this section the following terms shall, unless the context clearly appears otherwise, have the following meanings: –

"Athlete agent", a person who enters into a contract or agreement with a student-athlete or, directly or indirectly, recruits or solicits a student-athlete to enter into a contract or agreement. Such term includes an individual who represents to the public that the individual is an athlete agent. This term shall 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.

"Registration", registration as an athlete agent pursuant to this section.

"Student-athlete", an individual who engages in, is eligible to engage in or may be eligible in the future to engage in any intercollegiate or interscholastic sport at a public or private institution of higher education.

(b) A person shall not act as an athlete agent in commonwealth without holding a certificate of registration issued pursuant to this section.

(c) Before being issued a certificate of registration, a person may act as an athlete agent in this state for all purposes except signing a contract or agreement, if: (i) a student-athlete or another person acting on behalf of the student-athlete initiates communication with such individual; and (ii) within 7 days after an initial act as an athlete agent, such individual submits an application for registration as an athlete agent under this section.

(d) A contract or agreement resulting from conduct in violation of this section shall be void. In the event a student-athlete voids such contract or agreement, the student-athlete shall not be required to pay any consideration under such contract or agreement or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract or agreement, and the athlete agent shall be required to return any consideration received pursuant to such voided contract or agreement. Any contract or agreement under this section shall be void and unenforceable unless it is in writing.

(e) An applicant for registration shall submit an application therefor to the state secretary in such form as shall be prescribed by the state secretary. An application filed pursuant to this section shall be a public record. The application shall be in the name of an individual and signed or otherwise authenticated by the applicant under penalty of perjury, and state or contain the following:

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

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

(iii) any business or occupation engaged in by the applicant for the 5 years next preceding the date of submission of the application;

(iv) a description of the applicant's: (1) formal training as an athlete agent; (2) practical experience as an athlete agent; and (3) educational background relating to the applicant's activities as an athlete agent;

(v) the names and addresses of 3 individuals not related to the applicant who are willing to serve as references;

(vi) the name, sport and last known team for each individual for whom the applicant acted as an athlete agent during the 5 years next preceding the date of submission of the application;

(vii) the names and addresses of all persons who are: (1) with respect to the athlete agent's business if it is not a corporation, the partners, members, officers, managers, associates or profit-sharers having an interest of 5 percent or greater of the business; and (2) with respect to a corporation employing the athlete agent, the officers, directors and any shareholder of the corporation having an interest of 5 per cent or greater;

(viii) whether the applicant or any person named pursuant to clause (vii) has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony, and identify the crime;

(ix) whether there has been any administrative or judicial determination that the applicant or any person named pursuant to clause (vii) has made a false, misleading, deceptive or fraudulent representation;

(x) any instance in which the conduct of the applicant or any person named pursuant to clause (vii) 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;

(xi) any sanction, suspension or disciplinary action taken against the applicant or any person named pursuant to clause (vii) of this subsection by a governmental or quasi-governmental licensing entity or adjudicatory process arising out of occupational or professional conduct; and

(xii) 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 person named pursuant to clause (vii) as an athlete agent in any state.

(f) An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another state, may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed by the state secretary. The state secretary 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:

(i) was submitted in the other state within 6 months next preceding the submission of the application in this state and the applicant certifies that the information contained in the application is current;

(ii) contains information substantially similar to or more comprehensive than that required in an application submitted in this state; and

(iii) was signed by the applicant under penalty of perjury.

(g) Except as otherwise provided in this section, the state secretary shall issue a certificate of registration to an individual who complies the requirements of this section.

(h) The state secretary may refuse to issue a certificate of registration if the state secretary determines that the applicant has engaged in conduct that has an adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the state secretary may consider whether the applicant has:

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

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

(iii) engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;

(iv) engaged in conduct prohibited by this section;

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

(vi) engaged 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

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

(i) An athlete agent may apply to renew a registration by submitting an application for renewal in such form as shall be prescribed by the state secretary. An application filed pursuant to this section shall be a public record. The application for renewal shall be signed by the

applicant under penalty of perjury and shall contain current information on all matters required in an original registration.

(j) 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 this section, may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. The state secretary 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:

(i) was submitted in the other state within 6 months next preceding the filing in this state and the applicant certifies the information contained in the application for renewal is current;

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

(iii) was signed by the applicant under penalty of perjury.

(k) A certificate of registration or a renewal of a registration shall be valid for 2 years.

(l) The state secretary may suspend, revoke or refuse to renew a registration for conduct that would have justified denial of registration under this section.

(m) The state secretary may deny, suspend, revoke or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing as provided pursuant to the provisions of chapter 30A.

(n) An application for registration or renewal of registration shall be accompanied by a fee to be determined by the commissioner of administration pursuant to section 3B of chapter 7.

(o) A contract or agreement between an athlete agent and a student athlete shall be in a record, signed or otherwise authenticated by the parties. Such contract or agreement shall state or contain:

(i) 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 or agreement and any other consideration the athlete agent has received or will receive from any other source for entering into the contract or agreement or for providing the services;

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

(iii) a description of any expenses that the student athlete agrees to reimburse;

(iv) a description of the services to be provided to the student athlete;

(v) the duration of the contract or agreement; and

(vi) the date of execution.

(p) A student athlete may cancel a contract or agreement with an athlete agent by giving notice of the cancellation to the athlete agent in a record within 10 days after the contract or agreement is signed.

(q) A student athlete may not waive the right to cancel a contract or agreement with an athlete agent.

(r) If a student athlete cancels a contract or agreement with an athlete agent, the student athlete shall not be required to pay any consideration under such contract or agreement to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract or agreement.

(s) An athlete agent shall retain the following records for a period of 5 years:

(i) the name and address of each individual represented by the athlete agent;

(ii) any contract or agreement entered into by the athlete agent; and

(iii) any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into a contract or agreement.

The records required to be retained pursuant this section shall be open to inspection by the state secretary during normal business hours.

The athlete agent shall give a record of the signed or otherwise authenticated contract or agreement to the student athlete at the time of execution.

(t) An athlete agent, with the intent to induce a student-athlete to enter into a contract or agreement, shall not:

(i) give any materially false or misleading information or make a materially false promise or representation;

(ii) furnish anything of value to a student-athlete before the student-athlete enters into the contract or agreement; or

(iii) furnish anything of value to any other individual or another registered athlete agent before the student-athlete enters into the contract or agreement;

(u) An athlete agent shall not willfully:

(i) initiate contact with a student-athlete unless registered pursuant to this section;

(ii) refuse or fail to retain or permit inspection of the records required to be retained by this section;

(iii) fail to register when required by this section;

(iv) provide materially false or misleading information in an application for registration or renewal of registration; or

(v) predate or postdate a contract or agreement with a student athlete.

(w) The state secretary may assess a civil penalty against an athlete agent not to exceed $25,000 for a violation of the registration provisions of this section.

(x) Athlete agents representing student-athletes shall comply with the federal Sports Agent Responsibility and Trust Act, established in chapter 104 of title 15 of the United States Code, in their relationships with student-athletes.