

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:

Barry R. Finegold

DISTRICT/ADDRESS:

Second Essex and Middlesex

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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

57 “Athlete agent”, a person who enters into a contract or agreement with a student-athlete
58 or, directly or indirectly, recruits or solicits a student-athlete to enter into a contract or
59 agreement. Such term includes an individual who represents to the public that the individual is an
60 athlete agent. This term shall not include a spouse, parent, sibling, grandparent or guardian of the
61 student-athlete, or an individual acting solely on behalf of a professional sports team or
62 professional sports organization.

63 “Registration”, registration as an athlete agent pursuant to this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

110 (x) any instance in which the conduct of the applicant or any person named pursuant to
111 clause (vii) resulted in the imposition of a sanction, suspension or declaration of ineligibility to
112 participate in an interscholastic or intercollegiate athletic event on a student-athlete or
113 educational institution;

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

118 (xii) whether there has been any denial of an application for, suspension or revocation of,
119 or refusal to renew the registration or licensure of the applicant or any person named pursuant to
120 clause (vii) as an athlete agent in any state.

121 (f) An individual who has submitted an application for, and holds a certificate of,
122 registration or licensure as an athlete agent in another state, may submit a copy of the application
123 and certificate in lieu of submitting an application in the form prescribed by the state secretary.
124 The state secretary shall accept the application and the certificate from the other state as an
125 application for registration in this state if the application to the other state:

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

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

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

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

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

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

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

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

144 (iv) engaged in conduct prohibited by this section;

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

147 (vi) engaged in conduct the consequence of which was that a sanction, suspension or
148 declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event was
149 imposed on a student-athlete or educational institution; or

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

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

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

157 (j) An individual who has submitted an application for renewal of registration or
158 licensure in another state, in lieu of submitting an application for renewal in the form prescribed
159 pursuant to this section, may file a copy of the application for renewal and a valid certificate of
160 registration or licensure from the other state. The state secretary shall accept the application for
161 renewal from the other state as an application for renewal in this state if the application to the
162 other state:

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

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

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

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

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

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

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

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

179 (i) the amount and method of calculating the consideration to be paid by the student-
180 athlete for services to be provided by the athlete agent under the contract or agreement and any
181 other consideration the athlete agent has received or will receive from any other source for
182 entering into the contract or agreement or for providing the services;

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

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

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

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

189 (vi) the date of execution.

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

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

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

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

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

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

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

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

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

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

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

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

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

216 (u) An athlete agent shall not willfully:

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

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

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

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

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

224 (w) The state secretary may assess a civil penalty against an athlete agent not to exceed
225 \$25,000 for a violation of the registration provisions of this section.

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