



# Ohio Legislative Service Commission

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## Bill Analysis

Aida S. Montano

### **H.B. 404**

129th General Assembly  
(As Introduced)

**Reps.** Goyal, Murray, Antonio, Ruhl, Ramos

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## **BILL SUMMARY**

- Authorizes an institution of higher education to file a civil action for damages against a person who intentionally induces or purposely causes an athlete to violate, or against a staff person or former staff person of the institution who intentionally violates, the regulations of an intercollegiate athletic association or conference.
- Specifies the circumstances under which an institution of higher education suffers harm resulting from the acts or omissions described in the preceding dot point.
- Provides that a court in a civil action by an institution of higher education may award punitive or exemplary damages even if it does not award compensatory damages.

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## **CONTENT AND OPERATION**

### **Civil action for damages and equitable relief**

The current Athlete Agent Law, which regulates contracts of registered athlete agents with student athletes, authorizes an "institution of higher education" to bring a civil action for compensatory damages, punitive or exemplary damages, and equitable relief as the court finds appropriate against an "athlete agent" who violates that Law. The bill expands this authority by allowing an institution of higher education to bring such a civil action against either of the following: (1) any person who intentionally induces or otherwise purposely causes an "athlete" to violate the regulations of an intercollegiate athletic association or conference, or (2) a staff person or former staff person of the institution who intentionally violates the regulations of an intercollegiate athletic association or conference. The bill modifies current law by authorizing a court to grant equitable relief to a plaintiff to prevent harm that could result from the acts or

omissions of an athlete, athlete agent, or *other person* (added by the bill) if the court finds a reasonable likelihood that a violation occurred.<sup>1</sup> (See "**Definitions**," below, for the definitions of terms in quotation marks.)

## Harm to an institution

The bill modifies existing law by providing that an institution of higher education suffers harm when, as the result of any of the above described acts by an athlete agent, athlete, or *other person* (added by the bill), *either* (instead of both) of the following occurs:<sup>2</sup>

(1) The institution or athlete (the bill deletes "enrolled at the institution") is penalized, is declared ineligible to compete in intercollegiate athletics, or *is placed on probationary status* (added by the bill) by an intercollegiate athletic *association* (instead of "a national association that promotes or regulates intercollegiate athletics") or conference.

(2) The institution of higher education experiences any of the following (the bill deletes "as a result of the penalty or declaration of ineligibility"): (a) a loss of the ability to grant an athletic scholarship, (b) a loss of the ability to recruit an athlete, (c) a loss of eligibility to participate in intercollegiate competition, (d) a loss of eligibility to participate in post-season athletic competition, (e) a forfeiture of any athletic contest, or (f) an adverse financial impact including, but not limited to, lost revenue from media coverage of athletic competition or lost ticket sales (same as existing law).

## Damages

The bill extends the following provisions in existing law to a civil action against a person described in (1) or (2), above, under "**Civil action for damages and equitable relief.**" An institution of higher education that prevails in such 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, but may not award punitive or exemplary damages against a surety. The bill additionally provides that a court may award punitive or exemplary damages even if it does not award compensatory damages in a civil action against an athlete agent under current law or against a person described in (1) or (2), above, under "**Civil action for damages and equitable relief.**"<sup>3</sup>

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<sup>1</sup> R.C. 4771.20(A).

<sup>2</sup> R.C. 4771.20(B).

<sup>3</sup> R.C. 4771.20(C).

## Definitions

The following definitions in the Athlete Agent Law apply to the terms as used in the bill:<sup>4</sup>

"Athlete" means either of the following:

(1) A student enrolled in any "educational institution" or "institution of higher education" in Ohio, 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 either: (a) resides in Ohio, 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, or (b) does not reside in Ohio 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.

"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. Athlete agent does not include: (1) a member of a student athlete's immediate family, or (2) an attorney from whom an athlete seeks legal advice concerning a proposed professional sports services contract if the attorney does not represent the athlete in negotiating or soliciting the contract.

"Institution of higher education" means a "state university or college" or a private nonprofit college or university located in Ohio that possesses a certificate of authorization issued by the Ohio Board of Regents pursuant to R.C. Chapter 1713. (Educational Corporation Law).

"State university or college" includes the state universities listed in R.C. 3345.011 (University of Akron, Bowling Green State University, Central State University, University of Cincinnati, Cleveland State University, Kent State University, Miami University, Ohio University, Ohio State University, Shawnee State University, University of Toledo, Wright State University, and Youngstown State University), community colleges created pursuant to R.C. Chapter 3354., university branches created

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<sup>4</sup> R.C. 4771.01, not in the bill.

pursuant to R.C. Chapter 3355., technical colleges created pursuant to R.C. Chapter 3357., and state community colleges created pursuant to R.C. Chapter 3358.

"Educational institution" means any public or private institution located in Ohio that provides elementary or secondary education to students as its primary function.

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## HISTORY

ACTION	DATE
Introduced	01-03-12

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