

1 HB404
2 210618-4
3 By Representatives South, Lovvorn, Clouse and Pringle
4 RFD: State Government
5 First Read: 11-FEB-21

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2 ENROLLED, An Act,

3 Relating to student athletes; to provide that a
4 student athlete may earn compensation for the use of the
5 student athlete's name, image, or likeness; to provide that
6 certain postsecondary educational institutions may not prevent
7 or unreasonably restrict the receipt of compensation by a
8 student athlete for use of their name, image, or likeness; to
9 require each postsecondary educational institution subject to
10 this act to conduct financial literacy and life skills
11 programming for student athletes; and to establish a
12 commission to provide rules and recommendations on matters
13 related to name, image, and likeness issues; to establish
14 penalties for violations of the act and rules of the
15 commission; and to create Section 8-26B-32 of the Code of
16 Alabama 1975, to provide for oversight and enforcement by the
17 Alabama Athlete Agents Commission.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. For purposes of this act, the following
20 terms shall have the following meanings:

21 (1) COMPENSATION. Anything of value, monetary or
22 otherwise, granted to a party by a second party in exchange
23 for performance of a contract. For purposes of this act,
24 compensation does not include a scholarship awarded to a
25 student athlete by a postsecondary educational institution or

1 a stipend given to a student athlete by a postsecondary
2 educational institution which is calculated based on the cost
3 of living and cost of attendance at the institution.

4 (2) INTERCOLLEGIATE SPORT. An athletic program at a
5 postsecondary educational institution.

6 (3) NAME, IMAGE, OR LIKENESS. Any or all of those
7 elements that, together, are known as the right of publicity.

8 (4) POSTSECONDARY EDUCATIONAL INSTITUTION. A public
9 university or college in this state or an institution for
10 higher education as defined in Section 16-18A-2, Code of
11 Alabama 1975. This term does not include any Alabama Community
12 College System institutions.

13 (5) STUDENT ATHLETE. As defined in Section 8-26B-2,
14 Code of Alabama 1975.

15 Section 2. (a) A student athlete participating in
16 intercollegiate sports at a postsecondary educational
17 institution may earn compensation for the use of the student
18 athlete's name, image, or likeness pursuant to this act. The
19 compensation shall be commensurate with the market value of
20 the student athlete's name, image, or likeness.

21 (b) Subject to this act and any rule adopted by the
22 Alabama Collegiate Athletics Commission pursuant to Section 6,
23 a postsecondary educational institution may not adopt or
24 maintain a contract, rule, regulation, standard, or other
25 requirement that unreasonably restricts a student athlete from

1 receiving compensation for the student athlete's name, image,
2 or likeness.

3 (1) A postsecondary educational institution may
4 prohibit a student athlete from entering into an endorsement
5 contract with, or otherwise receiving compensation from, any
6 of the following categories of brands or companies:

7 a. A tobacco company or brand, including any tobacco
8 product, alternative nicotine product, electronic nicotine
9 delivery system, or any electronic nicotine delivery system
10 retailer, or any specialty retailer of electronic nicotine
11 delivery systems or tobacco specialty store, as defined in
12 Section 28-11-2, Code of Alabama 1975.

13 b. Any alcoholic beverage company or brand.

14 c. Any seller or dispensary of a controlled
15 substance, including, but not limited to, marijuana.

16 d. Any adult entertainment business.

17 e. Any casino or entities that sponsor or promote
18 gambling activities.

19 f. Any entity or individual that, in the reasonable
20 and good faith judgment of the postsecondary educational
21 institution, negatively impacts or reflects adversely on the
22 postsecondary educational institution or its athletic
23 programs, including, but not limited to, bringing about public
24 disrepute, contempt, embarrassment, scandal, ridicule, or
25 otherwise negatively impacting the reputation or the moral or

1 ethical standards of the postsecondary educational
2 institution.

3 (2) A postsecondary educational institution may also
4 prohibit a student athlete from wearing any item of clothing,
5 shoes, or other gear with the insignia of any entity while
6 wearing athletic gear or uniforms licensed by a postsecondary
7 educational institution or otherwise competing in any athletic
8 competition or institutionally-sponsored event.

9 (c) Compensation for a student athlete's name,
10 image, or likeness may not be conditioned on athletic
11 performance or attendance at a particular postsecondary
12 educational institution.

13 (d) Compensation for the use of a student athlete's
14 name, image, or likeness may be provided only by a third party
15 not owned or operating under the authority of the student
16 athlete's postsecondary educational institution.

17 (e) A postsecondary educational institution, an
18 entity with the purpose of supporting or benefitting the
19 institution or its intercollegiate sports, or any officer,
20 director, or employee of the institution or entity may not
21 compensate or cause compensation to be directed to a student
22 athlete or the family of a student athlete for use of their
23 name, image, or likeness.

24 (f) Except with the prior written consent of the
25 postsecondary education institution, a student athlete may not

1 enter into a contract for compensation for the use of the
2 student athlete's name, image, or likeness if the institution
3 determines that a term of the contract conflicts with a term
4 of a contract held by the student athlete's postsecondary
5 education institution.

6 (g) Before any contract for compensation for the use
7 of a student athlete's name, image, or likeness is executed,
8 and before any compensation is provided to the student athlete
9 in advance of a contract, the student athlete shall disclose
10 that contract to his or her postsecondary educational
11 institution in a manner prescribed by the institution.

12 (h) A contract for the use of a student athlete's
13 name, image, or likeness which is formed while the student
14 athlete is participating in an intercollegiate sport at a
15 postsecondary educational institution may not extend beyond
16 the student athlete's participation in the sport at the
17 institution.

18 Section 3. (a) A postsecondary educational
19 institution may not prevent or unreasonably restrict a student
20 athlete from obtaining professional representation for the
21 purpose of securing compensation for the use of the student
22 athlete's name, image, or likeness.

23 (b) An individual representing a student athlete for
24 purposes of exploring or securing compensation for the student
25 athlete's name, image, or likeness shall be registered as an

1 athlete agent with the state pursuant to Section 8-26B-4, Code
2 of Alabama 1975, or shall be a licensed attorney and a member
3 in good standing of the Alabama State Bar.

4 (c) A student athlete participating in
5 intercollegiate sports at a postsecondary educational
6 institution shall provide the institution with written notice
7 at least seven days prior to entering into a representation
8 agreement with any individual for purposes of exploring or
9 securing compensation for use of the student athlete's name,
10 image, or likeness.

11 Section 4. A scholarship awarded to a student
12 athlete by a postsecondary educational institution may not be
13 revoked or reduced as a result of the receipt of compensation
14 by a student athlete for use of their name, image, or
15 likeness, or as a result of the student athlete obtaining
16 professional representation pursuant to this act and any rule
17 adopted by the Alabama Collegiate Athletics Commission under
18 Section 6.

19 Section 5. (a) Each postsecondary educational
20 institution shall conduct financial literacy and life skills
21 programming for student athletes. At a minimum, the
22 programming must include information concerning financial aid
23 and debt management, as well as recommended model budgets for
24 student athletes based on that academic year's estimated cost
25 of attendance and the various scholarship statuses of student

1 athletes at the institution. The programming shall also
2 include information on time management skills necessary for
3 success as a student athlete and available academic resources.

4 (b) The programming may not include any marketing,
5 advertising, referral, or solicitation by providers of
6 financial products or services.

7 (c) This section does not place any obligation on a
8 postsecondary educational institution to provide tax guidance
9 or financial safeguards to student athletes outside of the
10 programming required under this section.

11 Section 6. (a) There is established the Alabama
12 Collegiate Athletics Commission. The purpose of the commission
13 shall be to develop rules and recommendations to maintain the
14 fairness and integrity of amateur intercollegiate athletics
15 and the principle of amateurism in intercollegiate athletics,
16 consistent with this act. The commission may do all of the
17 following:

18 (1) Make rules or recommendations related to the
19 implementation of name, image, and likeness standards and
20 requirements that are consistent with this act.

21 (2) Make rules or recommendations about a process to
22 manage registered athlete agents in the context of name,
23 image, and likeness.

24 (3) Make rules or recommendations for the
25 establishment of an independent dispute resolution process for

1 any dispute arising between a student athlete and a
2 postsecondary education institution related to name, image, or
3 likeness usage.

4 (4) Make rules or recommendations regarding the
5 financial literacy and life skills programming required by
6 this act.

7 (b) The commission shall consist of ~~six~~ seven
8 members, including the Governor, who shall serve as chair; the
9 Lieutenant Governor; the President Pro Tempore of the Senate;
10 the Speaker of the House of Representatives; ~~and~~ the Minority
11 Leaders of the House of Representatives and the Senate; and
12 the chair of the Alabama Athlete Agents Commission.

13 (c) The commission may consult with individuals or
14 groups with information or knowledge about issues related to
15 name, image, and likeness, including, but not limited to,
16 current or former student athletes, coaches, conference or
17 school administrators, professionals with expertise in sports
18 marketing, contracting and public relations, athlete agents,
19 and the Alabama Athlete Agents Commission.

20 (d) (1) Meetings of the commission shall be held at
21 the call of the chair.

22 (2) A meeting may only be held where there is a
23 quorum of at least three members.

24 (3) Meetings of the commission may take place via
25 electronic means.

1 (4) Within 15 calendar days of any called meeting,
2 the commission must publicly post a report of any formal rules
3 or recommendations that were developed during the meeting.

4 (e) A violation of a rule of the commission shall be
5 punishable by a civil penalty of up to one thousand dollars
6 (\$1,000).

7 Section 7. A student athlete may not receive or
8 enter into a contract for compensation for use of his or her
9 name, image, or likeness in a way that also uses any
10 registered or licensed marks, logos, verbiage, or designs of a
11 postsecondary education institution, unless the institution
12 has provided the student athlete with written permission to do
13 so prior to the execution of the contract. If permission is
14 granted, the postsecondary education institution, by agreement
15 of all parties, may be compensated for the use in a manner
16 consistent with market rates or prior practice.

17 Section 8. A student athlete may not receive
18 compensation for use of their name, image, or likeness as an
19 inducement to attend or enroll in or continue attending a
20 specific postsecondary educational institution.

21 Section 9. This act does not create a cause of
22 action for any actions taken by a postsecondary education
23 institution prior to the effective date of this act,
24 including, but not limited to, any action under a claim or

1 theory relating to restriction on trade or tortious
2 interference of fair competition.

3 Section 10. Nothing in this act or rule of the
4 commission shall affect the employment status of a student
5 athlete with a postsecondary education institution. A student
6 athlete shall not be considered an employee of a postsecondary
7 education institution based on participation in an
8 intercollegiate sport.

9 Section 11. It is the intent of the Legislature that
10 constitutionally created boards of trustees of postsecondary
11 educational institutions comply with the requirement of this
12 act.

13 Section 12. (a) An individual other than a student
14 athlete who violates subsections (c), (d), or (e) of Section 2
15 or who grants compensation to a student athlete in a manner
16 that causes the student athlete to violate Section 8 shall be
17 guilty of a Class C felony.

18 ~~(b) A student athlete who receives compensation as a~~
19 ~~result of a violation of subsections (c), (d), or (e) of~~
20 ~~Section 2 or Section 8 shall be guilty of a Class A~~
21 ~~misdemeanor.~~

22 ~~(c)~~ (b) (1) Compliance with this act and the rules
23 adopted by the Alabama Collegiate Athletics Commission shall
24 be monitored by the Alabama Athlete Agents Commission.

1 ~~(2) If any officer or employee of a postsecondary~~
2 ~~educational institution, athlete agent, licensed attorney, or~~
3 ~~student athlete witnesses a potential violation of this act or~~
4 ~~the rules adopted by the Alabama Collegiate Athletics~~
5 ~~Commission, he or she shall report that potential violation to~~
6 ~~the Alabama Athlete Agents Commission, which shall work with~~
7 ~~appropriate law enforcement as necessary to investigate and~~
8 ~~address credible reports.~~

9 (2) If any officer, employee, or agent of a
10 postsecondary educational institution, any athlete agent, any
11 licensed attorney, or any student athlete witnesses a
12 potential violation of this act or the rules adopted by the
13 Alabama Collegiate Athletics Commission pursuant to this act,
14 that person shall report the potential violation to the
15 postsecondary educational institution at which the student
16 athlete at issue participates or participated in
17 intercollegiate sports. The postsecondary educational
18 institution shall investigate the report. If the institution
19 determines a violation has occurred, the institution, within
20 14 days, shall report the matter to the Alabama Athlete Agents
21 Commission, which shall review the matter. The Alabama Athlete
22 Agents Commission shall work with appropriate law enforcement
23 as necessary to investigate and address credible reports
24 received from an institution under this subdivision.

1 Section 13. Section 8-26B-32 is added to the Code of
2 Alabama 1975, to read as follows:

3 §8-26B-32.

4 The Alabama Athlete Agents Commission shall carry
5 out the functions assigned to it in Section 12 of the act
6 creating this code section, relating to oversight and
7 enforcement of the act and rules adopted by the Alabama
8 Collegiate Athletics Commission.

9 Section 14. This act shall become effective on July
10 1, 2021, following its passage and approval by the Governor,
11 or its otherwise becoming law.

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 09-MAR-21, as amended.

Jeff Woodard
Clerk

Senate	13-APR-21	Amended and Passed
House	15-APR-21	Concurred in Senate Amendment