

1 AN ACT relating to intercollegiate athletics.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO
4 READ AS FOLLOWS:

5 *As used in Sections 1 to 3 of this Act:*

6 *(1) "Athletic authority" means any athletic association, conference, or other group*
7 *or organization with authority over intercollegiate athletic programs, including*
8 *but not limited to the National Collegiate Athletic Association and the National*
9 *Junior College Athletic Association;*

10 *(2) "Compensation" means any form of payment or remuneration, including but not*
11 *limited to cash, gifts, in-kind items of value, social media compensation,*
12 *payments for licensing or use of publicity rights, payments for other intellectual*
13 *or intangible property rights under federal or state law, and any other form of*
14 *payment or remuneration, except as excluded under Sections 1 to 3 of this Act,*
15 *but shall not mean or include the following:*

16 *(a) Tuition, room, board, books, fees, and personal expenses that a*
17 *postsecondary educational institution provides a student athlete in*
18 *accordance with the rules of the athletic association or conference of which*
19 *the postsecondary educational institution is a member;*

20 *(b) Federal Pell Grants and other state and federal grants or scholarships*
21 *unrelated to and not awarded because of a student athlete's participation in*
22 *intercollegiate athletics or sports competition;*

23 *(c) Any other financial aid, benefits, or awards that a postsecondary*
24 *educational institution provides a student athlete in accordance with the*
25 *rules of the athletic association or conference of which the postsecondary*
26 *educational institution is a member; or*

27 *(d) The payment of wages and benefits to a student athlete for work actually*

1 performed, but not for athletic ability or participation in intercollegiate
2 athletics, at a rate commensurate with the prevailing rate for similar work
3 in the locality of the student athlete's postsecondary educational institution;

4 (3) "Image" means a picture of the student athlete;

5 (4) "Intercollegiate athletic program" means an intercollegiate athletics program
6 played at the collegiate level for which eligibility requirements for participation
7 by a student athlete are established by a national association for promotion or
8 regulation of collegiate athletics;

9 (5) "Likeness" means a physical, digital, or other depiction or representation of a
10 student athlete;

11 (6) "Name" means the first or last name, or the nickname, of a student athlete when
12 used in a context that reasonably identifies the student athlete with particularity;

13 (7) "Name, image, and likeness agreement" means a contract or similar
14 arrangement between a student athlete and a third-party licensee regarding the
15 commercial use of the name, image, or likeness of the student athlete;

16 (8) "Postsecondary educational institution" means a public or private Kentucky
17 college, university, or community college and any of those institution's affiliate
18 corporations or other entities designated for the management of intercollegiate
19 athletics;

20 (9) "Publicity right" means any right that is:

21 (a) Licensed under a name, image, or likeness agreement; or

22 (b) Recognized under a federal or state law that permits an individual to control
23 and profit from the commercial use of the name, image, or likeness of the
24 individual;

25 (10) "Social media compensation" means all forms of payment for engagement on
26 social media received by the student athlete as a result of the use of that student
27 athlete's name, image, or likeness;

1 (11) "Student athlete" means an individual who engages in, is eligible to engage in,
2 or may be eligible in the future to engage in, an intercollegiate athletics program
3 at a postsecondary educational institution, but does not include for a particular
4 sport an individual that is permanently ineligible to participate in that particular
5 intercollegiate sport; and

6 (12) "Third-party licensee" means any individual or entity that licenses publicity
7 rights or the use of the name, image, or likeness from any prospective or current
8 student athlete or group of student athletes, but shall not include any national
9 association for the promotion or regulation of collegiate athletics, athletics
10 conferences, or postsecondary educational institutions.

11 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO
12 READ AS FOLLOWS:

13 (1) Except as provided for under Sections 1 to 3 of this Act, a student athlete may:

14 (a) Earn compensation, commensurate with market value, for the use of the
15 name, image, and likeness of the student athlete while enrolled at a
16 postsecondary educational institution; and

17 (b) Obtain and retain a certified agent for any matter or activity relating to
18 such compensation.

19 (2) Notwithstanding any other provision of law or an agreement to the contrary, a
20 student athlete shall not be deemed an employee or independent contractor of an
21 athletic authority or a postsecondary educational institution based on the student
22 athlete's participation in an intercollegiate athletics program.

23 (3) No student athlete may earn compensation in exchange for the student athlete's
24 athletic ability or participation in intercollegiate athletics or sports competitions.

25 (4) A student athlete who enters into a name, image, and likeness agreement for
26 compensation shall disclose the contract to a designated official of the
27 postsecondary educational institution in which the student is enrolled. The

disclosure shall be made within three (3) calendar days of the execution of the agreement, or three (3) calendar days before the next scheduled intercollegiate athletics competition in which the student athlete may participate, whichever occurs earliest. The postsecondary educational institution shall designate the official to whom the student athlete must disclose.

(5) No student athlete shall enter into a name, image, and likeness agreement or receive compensation from a third-party licensee relating to the name, image, or likeness of the student athlete:

(a) Before the date on which the student athlete enrolls at a postsecondary educational institution; or

(b) For the endorsement or promotion of gambling, sports betting, marijuana, tobacco or alcohol products, performance-enhancing supplements, adult entertainment, or any other product or service that is reasonably considered to be inconsistent with the values or mission of a postsecondary educational institution.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

(1) Except as provided for under Sections 1 to 3 of this Act:

(a) A postsecondary educational institution shall not prevent or otherwise enforce any contract, rule, regulation, standard, or other requirement that prevents a student athlete of that institution from earning compensation as a result of the use of the student's name, image, or likeness; and

(b) An athletic authority shall not prevent or otherwise enforce a contract, rule, regulation, standard, or other requirement that prevents:

1. A student athlete of a postsecondary educational institution from earning compensation as a result of the use of the student's name, image, or likeness; or

1 2. A postsecondary educational institution from participating in an
2 intercollegiate athletics program as a result of the compensation of a
3 student athlete for the use of the student's name, image, or likeness.

4 (2) Provisions identified under subsection (1) of this section shall be void and
5 unenforceable against the postsecondary educational institution, the student
6 athlete, or the athletic authority.

7 (3) To protect the integrity of its educational mission and intercollegiate athletics
8 program, a postsecondary educational institution may impose reasonable
9 limitations on the dates and times that a student athlete may participate in
10 endorsement, promotional, social media, or other activities related to a name,
11 image, and likeness agreement.

12 (4) Receiving compensation from the use of a student athlete's name, image, or
13 likeness shall not affect the student athlete's scholarship eligibility, grant-in-aid
14 or other financial aid, awards, or benefits of the student athlete's intercollegiate
15 athletic eligibility. Once received from a postsecondary educational institution,
16 such benefits shall not be revoked or reduced, nor the terms and conditions
17 altered, as a result of a student athlete earning compensation or obtaining
18 professional or legal representation pursuant to Sections 1 to 3 of this Act.

19 (5) A postsecondary educational institution or an athletic authority shall not, directly
20 or indirectly:

21 (a) Enter into, or offer to enter into, a name, image, and likeness agreement
22 with a prospective or current student athlete; or

23 (b) Provide a prospective or current student athlete or the student athlete's
24 family compensation in relation to the use of the student athlete's name,
25 image, or likeness.

26 (6) (a) A postsecondary educational institution or athletic authority shall not
27 prevent a student athlete from obtaining professional representation in

1 relation to name, image or likeness, or to secure a name, image, and
2 likeness agreement or legal matters, including but not limited to
3 representation provided by athlete agents or legal representation provided
4 by attorneys.

5 (b) Professional representation obtained by the student athlete shall be from
6 persons licensed by the state. Professional representation provided by
7 athlete agents shall be by persons licensed pursuant to the Revised Uniform
8 Athlete Agents Act, KRS 164.6901 to 164.6935. Legal representation of a
9 student athlete shall be by attorneys licensed in Kentucky.

10 (c) Athlete agents providing professional representation to student athletes
11 shall comply with the federal Sports Agent Responsibility and Trust Act, or
12 its successors, in their relationships with student athletes.

13 (7) (a) A third-party licensee may not enter into, or offer to enter into, a name,
14 image, and likeness agreement with a student athlete or otherwise
15 compensate a student athlete for the use of the student athlete's name,
16 image, and likeness rights if a provision of the agreement or the use of the
17 student athlete's name, image, and likeness rights conflicts with a provision
18 of a contract, rule, regulation, standard, or other requirement of the
19 postsecondary educational institution unless such contract or use is
20 expressly approved in writing by the postsecondary educational institution.

21 (b) No postsecondary educational institution, booster, third-party licensee, or
22 any other individual or entity shall provide a prospective or current student
23 athlete compensation or enter into a name, image, and likeness agreement
24 as an inducement for the student athlete to attend or enroll in a specific
25 institution or group of institutions.

26 (8) Nothing in Sections 1 to 3 of this Act shall:

27 (a) Be interpreted as to restrict a postsecondary educational institution from

1 exercising its sole discretion to control the authorized use of its trademarks
2 or logos or to determine a student athlete's apparel, gear, or other wearables
3 during an intercollegiate athletics competition or university-sponsored
4 event;

5 (b) Alter any state or federal laws or regulations regarding the award of
6 financial aid at postsecondary educational institutions; and

7 (c) Be interpreted to modify any requirements or obligations imposed under
8 Title IX of the Education Amendments of 1972.

9 (9) Any person who prevails against any postsecondary educational institution or any
10 athletic authority in any action in the courts regarding a violation of Sections 1 to
11 3 of this Act may, upon a finding that the violation was willfully committed in
12 violation of Section 1 to 3 of this Act, be awarded costs, including reasonable
13 attorney's fees, incurred in connection with the legal action. If the person
14 prevails in part, the court may in its discretion award costs of an appropriate
15 portion thereof. In addition, it shall be within the discretion of the court to award
16 the person an amount not to exceed twenty-five dollars (\$25) for each day the
17 violation was imposed. Attorney's fees, costs, and awards under this subsection
18 shall be paid by the institution or authority that the court determines is
19 responsible for the violation.

20 ➔Section 4. This Act may be cited as the Pay to Portray Act.

21 ➔Section 5. This Act shall take effect July 1, 2023.