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

2.4

2	ENROLLED	, An	Act,

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

(1) COMPENSATION. Anything of value, monetary or otherwise, granted to a party by a second party in exchange for performance of a contract. For purposes of this act, compensation does not include a scholarship awarded to a 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.

1.3

2.4

- (2) INTERCOLLEGIATE SPORT. An athletic program at a postsecondary educational institution.
- (3) NAME, IMAGE, OR LIKENESS. Any or all of those elements that, together, are known as the right of publicity.
- (4) POSTSECONDARY EDUCATIONAL INSTITUTION. A public university or college in this state or an institution for higher education as defined in Section 16-18A-2, Code of Alabama 1975. This term does not include any Alabama Community College System institutions.
- (5) STUDENT ATHLETE. As defined in Section 8-26B-2, Code of Alabama 1975.

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

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

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

1.3

2.4

- (1) A postsecondary educational institution may prohibit a student athlete from entering into an endorsement contract with, or otherwise receiving compensation from, any of the following categories of brands or companies:
- a. A tobacco company or brand, including any tobacco product, alternative nicotine product, electronic nicotine delivery system, or any electronic nicotine delivery system retailer, or any specialty retailer of electronic nicotine delivery systems or tobacco specialty store, as defined in Section 28-11-2, Code of Alabama 1975.
 - b. Any alcoholic beverage company or brand.
- c. Any seller or dispensary of a controlled substance, including, but not limited to, marijuana.
 - d. Any adult entertainment business.
- e. Any casino or entities that sponsor or promote gambling activities.
 - f. Any entity or individual that, in the reasonable and good faith judgment of the postsecondary educational institution, negatively impacts or reflects adversely on the postsecondary educational institution or its athletic programs, including, but not limited to, bringing about public disrepute, contempt, embarrassment, scandal, ridicule, or otherwise negatively impacting the reputation or the moral or

ethical standards of the postsecondary educational institution.

1.3

2.4

- (2) A postsecondary educational institution may also prohibit a student athlete from wearing any item of clothing, shoes, or other gear with the insignia of any entity while wearing athletic gear or uniforms licensed by a postsecondary educational institution or otherwise competing in any athletic competition or institutionally-sponsored event.
- (c) Compensation for a student athlete's name, image, or likeness may not be conditioned on athletic performance or attendance at a particular postsecondary educational institution.
- (d) Compensation for the use of a student athlete's name, image, or likeness may be provided only by a third party not owned or operating under the authority of the student athlete's postsecondary educational institution.
- (e) A postsecondary educational institution, an entity with the purpose of supporting or benefitting the institution or its intercollegiate sports, or any officer, director, or employee of the institution or entity may not compensate or cause compensation to be directed to a student athlete or the family of a student athlete for use of their name, image, or likeness.
- (f) Except with the prior written consent of the postsecondary education institution, a student athlete may not

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

1.3

2.4

- (g) Before any contract for compensation for the use of a student athlete's name, image, or likeness is executed, and before any compensation is provided to the student athlete in advance of a contract, the student athlete shall disclose that contract to his or her postsecondary educational institution in a manner prescribed by the institution.
- (h) A contract for the use of a student athlete's name, image, or likeness which is formed while the student athlete is participating in an intercollegiate sport at a postsecondary educational institution may not extend beyond the student athlete's participation in the sport at the institution.
- Section 3. (a) A postsecondary educational institution may not prevent or unreasonably restrict a student athlete from obtaining professional representation for the purpose of securing compensation for the use of the student athlete's name, image, or likeness.
- (b) An individual representing a student athlete for purposes of exploring or securing compensation for the student athlete's name, image, or likeness shall be registered as an

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

1.3

2.4

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

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

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

L	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.

1.3

2.4

- (b) The programming may not include any marketing, advertising, referral, or solicitation by providers of financial products or services.
- (c) This section does not place any obligation on a postsecondary educational institution to provide tax guidance or financial safeguards to student athletes outside of the programming required under this section.

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

- (1) Make rules or recommendations related to the implementation of name, image, and likeness standards and requirements that are consistent with this act.
- (2) Make rules or recommendations about a process to manage registered athlete agents in the context of name, image, and likeness.
- (3) Make rules or recommendations for the establishment of an independent dispute resolution process for

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

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

- (b) The commission shall consist of six seven members, including the Governor, who shall serve as chair; the Lieutenant Governor; the President Pro Tempore of the Senate; the Speaker of the House of Representatives; and the Minority Leaders of the House of Representatives and the Senate; and the chair of the Alabama Athlete Agents Commission.
- (c) The commission may consult with individuals or groups with information or knowledge about issues related to name, image, and likeness, including, but not limited to, current or former student athletes, coaches, conference or school administrators, professionals with expertise in sports marketing, contracting and public relations, athlete agents, and the Alabama Athlete Agents Commission.
- (d) (1) Meetings of the commission shall be held at the call of the chair.
- (2) A meeting may only be held where there is a 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.

1.3

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

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

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

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

L	theory	relatin	g to	restriction	on	trade	or	tortious
2	interfe	rence of	fa	ir competiti	on.			

1.3

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

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

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

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

(c) (b) (1) Compliance with this act and the rules adopted by the Alabama Collegiate Athletics Commission shall 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.

10

11

12

1.3

14

15

16

17

18

19

20

21

22

23

2.4

(2) If any officer, employee, or agent of a postsecondary educational institution, any athlete agent, any licensed attorney, or any student athlete witnesses a potential violation of this act or the rules adopted by the Alabama Collegiate Athletics Commission pursuant to this act, that person shall report the potential violation to the postsecondary educational institution at which the student athlete at issue participates or participated in intercollegiate sports. The postsecondary educational institution shall investigate the report. If the institution determines a violation has occurred, the institution, within 14 days, shall report the matter to the Alabama Athlete Agents Commission, which shall review the matter. The Alabama Athlete Agents Commission shall work with appropriate law enforcement as necessary to investigate and address credible reports 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.

1						
2						
3	_					
4		Speaker of the House of Repr	esentatives			
5						
J						
6	I	President and Presiding Office	er of the Senate			
7		House of Representative	es			
8 9	I hereby certify that the within Act originated in					
9 10	and was passe	ed by the House 09-MAR-21, as	amended.			
11		Jeff Woodard	1			
12		Clerk				
13						
14						
15	Senate	13-APR-21	- Amended and Passed			
16	House	15-APR-21	Concurred in Sen- ate Amendment			