

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

1 ENGROSSED

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

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

26 (1) COMPENSATION. Anything of value, monetary or
27 otherwise, granted to a party by a second party in exchange

1 for performance of a contract. For purposes of this act,
2 compensation does not include a scholarship awarded to a
3 student athlete by a postsecondary educational institution or
4 a stipend given to a student athlete by a postsecondary
5 educational institution which is calculated based on the cost
6 of living and cost of attendance at the institution.

7 (2) INTERCOLLEGIATE SPORT. An athletic program at a
8 postsecondary educational institution.

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

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

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

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

24 (b) Subject to this act and any rule adopted by the
25 Alabama Collegiate Athletics Commission pursuant to Section 6,
26 a postsecondary educational institution may not adopt or
27 maintain a contract, rule, regulation, standard, or other

1 requirement that unreasonably restricts a student athlete from
2 receiving compensation for the student athlete's name, image,
3 or likeness.

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

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

14 b. Any alcoholic beverage company or brand.

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

17 d. Any adult entertainment business.

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

20 f. Any entity or individual that, in the reasonable
21 and good faith judgment of the postsecondary educational
22 institution, negatively impacts or reflects adversely on the
23 postsecondary educational institution or its athletic
24 programs, including, but not limited to, bringing about public
25 disrepute, contempt, embarrassment, scandal, ridicule, or
26 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
26 enter into a contract for compensation for the use of the
27 student athlete's name, image, or likeness if the institution

1 determines that a term of the contract conflicts with a term
2 of a contract held by the student athlete's postsecondary
3 education institution.

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

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

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

21 (b) An individual representing a student athlete for
22 purposes of exploring or securing compensation for the student
23 athlete's name, image, or likeness shall be registered as an
24 athlete agent with the state pursuant to Section 8-26B-4, Code
25 of Alabama 1975, or shall be a licensed attorney and a member
26 in good standing of the Alabama State Bar.

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

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

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

1 (b) The programming may not include any marketing,
2 advertising, referral, or solicitation by providers of
3 financial products or services.

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

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

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

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

21 (3) Make rules or recommendations for the
22 establishment of an independent dispute resolution process for
23 any dispute arising between a student athlete and a
24 postsecondary education institution related to name, image, or
25 likeness usage.

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

4 (b) The commission shall consist of six members,
5 including the Governor, who shall serve as chair; the
6 Lieutenant Governor; the President Pro Tempore of the Senate;
7 the Speaker of the House of Representatives; and the Minority
8 Leaders of the House of Representatives and the Senate.

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

16 (d)(1) Meetings of the commission shall be held at
17 the call of the chair.

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

20 (3) Meetings of the commission may take place via
21 electronic means.

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

25 (e) A violation of a rule of the commission shall be
26 punishable by a civil penalty of up to one thousand dollars
27 (\$1,000).

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

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

15 Section 9. This act does not create a cause of
16 action for any actions taken by a postsecondary education
17 institution prior to the effective date of this act,
18 including, but not limited to, any action under a claim or
19 theory relating to restriction on trade or tortious
20 interference of fair competition.

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

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

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

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

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

17 ~~(2) If any officer or employee of a postsecondary~~
18 ~~educational institution, athlete agent, licensed attorney, or~~
19 ~~student athlete witnesses a potential violation of this act or~~
20 ~~the rules adopted by the Alabama Collegiate Athletics~~
21 ~~Commission, he or she shall report that potential violation to~~
22 ~~the Alabama Athlete Agents Commission, which shall work with~~
23 ~~appropriate law enforcement as necessary to investigate and~~
24 ~~address credible reports.~~

25 (2) If any officer, employee, or agent of a
26 postsecondary educational institution, any athlete agent, any
27 licensed attorney, or any student athlete witnesses a

1 potential violation of this act or the rules adopted by the
2 Alabama Collegiate Athletics Commission pursuant to this act,
3 that person shall report the potential violation to the
4 postsecondary educational institution at which the student
5 athlete at issue participates or participated in
6 intercollegiate sports. The postsecondary educational
7 institution shall investigate the report. If the institution
8 determines a violation has occurred, the institution, within
9 14 days, shall report the matter to the Alabama Athlete Agents
10 Commission, which shall review the matter. The Alabama Athlete
11 Agents Commission shall work with appropriate law enforcement
12 as necessary to investigate and address credible reports
13 received from an institution under this subdivision.

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

16 §8-26B-32.

17 The Alabama Athlete Agents Commission shall carry
18 out the functions assigned to it in Section 12 of the act
19 creating this code section, relating to oversight and
20 enforcement of the act and rules adopted by the Alabama
21 Collegiate Athletics Commission.

22 Section 14. This act shall become effective on July
23 1, 2021, following its passage and approval by the Governor,
24 or its otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on State Government
..... 11-FEB-21

Read for the second time and placed
on the calendar with 1 substitute
and 1 amendment..... 24-FEB-21

Read for the third time and passed
as amended..... 09-MAR-21
Yeas 63, Nays 31, Abstains 5

Jeff Woodard
Clerk