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Bill Analysis

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Version: As Reported by House Civil Justice

Primary Sponsor: Sen. Wilson

Abby Gerty, Research Analyst and Chris Edwards, Attorney

SUMMARY

Ohio Notary Law

- Requires a notary to take the oath of office in person.
- Eliminates the requirement that the Secretary of State (SOS) hold an administrative hearing disciplining a notary for violating the notary law.
- Allows the SOS to revoke a notary public's commission for any act or omission that demonstrates a lack of honesty, integrity, competence, or reliability as well as refusing to cooperate with an investigation of an alleged violation.
- Prohibits a notary public whose commission has been revoked by the SOS from reappointment.
- Revises the required information to be included in the notary database maintained by the SOS.
- Authorizes online notaries to charge a \$10 technology fee per online notarization session for use of an online identity verification process and increases the maximum fee for online notarization from \$25 to \$30.
- Clarifies the certification required by persons making an acknowledgment to account for those made before nonnotaries that are authorized to perform notarial acts (such as judges).
- Specifies the form of an oath or affirmation given by a notary to a person signing a jurat.

* This analysis was prepared before the report of the House Civil Justice Committee appeared in the House Journal. Note that the legislative history may be incomplete.

- Establishes acceptable forms of a notarial certificate used by a nonnotary whose authority is recognized in Ohio.
- Requires notaries seeking a duplicate commission or amending an existing commission to file an electronic form, as opposed to a paper form.
- Imposes new requirements for verifying the identity of persons making an acknowledgment or a jurat.
- Expands the list of county government officials that are required to accept electronically notarized documents to include clerks of courts of record and deputy registrars.
- Specifies that a notary commission is not an occupational or professional license for the purposes of the state's occupational regulation laws.

Limited liability companies (LLCs)

- Allows the Secretary of State to charge a \$50 filing fee for a limited liability company (LLC) statement of authority, an amendment or cancellation of a statement of authority, or a denial of a statement of authority.
- Eliminates the \$50 filing fee for certificates of correction concerning the registration or assumed name of a foreign LLC.
- Requires a certificate of merger to include the name and mailing address of the person or entity that will provide a copy of the merger agreement to shareholders, partners, or equity holders of a constituent entity.

Compensation for intercollegiate student-athletes

- Authorizes an institution of higher education (a state institution of higher education or a private college) to compensate a student-athlete for use of the student-athlete's name, image, or likeness (NIL).
- Specifies that a student-athlete is not an employee because the institution compensates the student-athlete for use of the student-athlete's NIL.
- Prohibits a student-athlete from using specified property belonging to an institution to further opportunities for the student-athlete to earn NIL compensation unless authorized by the institution.
- Authorizes an institution to provide money, resources, or other benefits to an institutional marketing associate or third-party entity to incentivize it to facilitate opportunities for student-athletes to earn NIL compensation.
- Prohibits an institution, athletic association, conference, or other group or organization with authority over intercollegiate athletics from taking specified actions regarding a student-athlete for obtaining representation from an athlete agent or attorney or for earning NIL or any other athletics-related compensation.

- Makes any contract or proposed contract providing a student-athlete with NIL compensation that is disclosed to an institution as required under continuing law confidential and not a public record for purposes of the Public Records Law.
- Authorizes student-athletes, institutions, institutional marketing associates, and third-party entities to sue for violations of the bill and provides immunity to institutions, associates, and entities and their employees for damages resulting from a student-athlete’s inability to earn NIL compensation.
- Prohibits a student-athlete under age 18 from entering into a contract that provides the student-athlete with NIL compensation unless the contract includes the written consent of the student-athlete’s parent, guardian, or custodian.

TABLE OF CONTENTS

Overview	4
Notary Public Law	4
Oath of office.....	4
Notary commissions	4
Revocation of commission	4
Electronic forms.....	5
Notary public database	5
Notary public fees	5
Notarial acts	5
Notarial certificates	5
Acknowledgments	6
Jurats	6
Identification	6
Certifications.....	7
Electronically notarized documents.....	7
Occupational regulations	8
Limited liability companies (LLCs).....	8
Fees collected by the Secretary of State.....	8
Merger certificates	8
Compensation for intercollegiate student-athletes	9
Student-athlete compensation by institutions	9
Institutional prohibitions.....	10
Athletic authority prohibitions.....	10
Additional prohibitions.....	11
NIL contracts.....	12

Confidentiality of disclosed contracts	12
Minor student-athlete contracts.....	12
Contracts for advertisements.....	12
Student-athlete use of school property	12
Scholarships.....	12
Remedies and immunities.....	13
Student-athlete employment status.....	13
Limitations.....	14
Professional representation	14

DETAILED ANALYSIS

Overview

The bill makes several miscellaneous changes to the Ohio Notary Law and to the law governing limited liability companies (LLCs).

Notary Public Law

Oath of office

The bill amends the requirement that a notary take and subscribe an oath of office. Under the bill, prior to engaging in official duties, a notary is required to take an oath of office in person before another notary public or an officer authorized to administer oaths.¹

Notary commissions

Revocation of commission

Under continuing law, the Secretary of State (SOS) may revoke a notary's commission if, by presentation of satisfactory evidence, the notary is found to have engaged in misconduct or is unable to perform duties as a notary. Current law requires the SOS to hold an administrative hearing regarding such conduct before revoking the notary's commission. The bill removes the administrative hearing requirement and adds additional details as to when the SOS may revoke a notary's commission. Specifically, the SOS may revoke a notary's commission if the SOS's investigation determines that the notary has demonstrated a lack of honesty, integrity, competence, or reliability, including by doing any of the following:

- Failing to administer an oath or affirmation when executing a jurat;
- Performing a notarial act, other than an online notarization, without requiring a personal appearance;
- Fraudulent, dishonest, or deceitful misstatement or omission on a notarial certificate.

¹ R.C. 147.01(G) and 147.03.

A notary is required to fully cooperate with, and timely respond to questions from, the SOS in conjunction with such an investigation. The SOS is required to revoke the commission of any notary who fails to do so. Furthermore, the bill specifies that a notary whose commission is revoked is ineligible for reappointment.²

Electronic forms

Continuing law establishes a procedure for notaries to replace the physical copies of their commissions when the commission is lost or destroyed. Under current law, the notary is required to provide an affidavit that the original commission has been lost or destroyed. Under the bill, notaries must instead submit an electronic commission request form.

Similarly, the bill requires a notary seeking an amendment to their commission, such as changing a name or address, to submit an electronic amendment form, as opposed to a paper form. The SOS is required to prescribe and make available both an electronic duplicate commission request form and an electronic amendment form.³

Notary public database

Continuing law requires the SOS to maintain a database of notaries public. Under the bill, the notary database must include each notary's "status [and] authority to perform notarial acts" rather than "verification of . . . authority and good standing." Additionally, the database must include whether a notary is "authorized" rather than "registered" to perform online notarizations.⁴

Notary public fees

Under current law, a notary public is authorized to charge up to \$25 for an online notarization. The bill increases the maximum fee to \$30. Additionally, the bill authorizes online notaries to charge a \$10 technology fee per online notarization session for use of an online identity verification process. A notary public is prohibited from charging or accepting a fee greater than these amounts.⁵

Notarial acts

Notarial certificates

Current law requires that a notary public provide a completed notarial certificate for every notarial act performed. Under the bill, the form of a notarial certificate used by a person authorized to perform notarial acts must be accepted if any the following apply:

- The certificate is in a form prescribed by state law;

² R.C. 147.01(C)(3) and 147.032.

³ R.C. 147.371.

⁴ R.C. 147.051.

⁵ R.C. 147.08 and 147.141(A)(18).

- The certificate is in a form prescribed by law or regulation in the place in which the notarial act is performed;
- The certificate contains the words:
 - “Acknowledged by me,” or a substantial equivalent;
 - “Sworn to and subscribed before me,” “affirmed to and subscribed by me,” or a substantial equivalent.⁶

Acknowledgments

One of the most common notarial acts that notaries perform are “acknowledgments.” Under continuing law, an acknowledgment is a declaration by an individual before a notary that the individual has signed a record for the purpose stated in the record, and if the record is signed in a representative capacity, that the individual signed the record with proper authority and signed it as the act of the individual or entity identified in the record.⁷

One of the requirements for a valid acknowledgment is that the person taking the acknowledgement must certify that the person doing the acknowledging appeared before the notary. Continuing law, unchanged by the bill, enables certain persons that are not notaries, such as judges, to perform “notarial acts.” The bill specifies that these notarial acts include:

- Administering oaths or affirmations required or authorized by law;
- Taking and certifying acknowledgements of deeds, mortgages, liens, powers of attorney, and other instruments of writing;
- Taking and certifying depositions.⁸

The person taking the acknowledgment may also certify that the person doing the acknowledging appeared before a nonnotary that is authorized to perform notarial acts.⁹

Jurats

The bill makes new requirements with regard to verifying the identification of persons making an acknowledgment or a jurat. A jurat is an oath or affirmation that the contents of a particular document are true.

Identification

Under the bill, a notary public who takes an acknowledgment of a record is required to determine, from personal knowledge or satisfactory evidence of the identity of the person acknowledging, that the person appearing before the notary public and making the

⁶ R.C. 147.542.

⁷ R.C. 147.011(A).

⁸ R.C. 147.51.

⁹ R.C. 147.53.

acknowledgment has the identity claimed and that the signature on the record is the signature of the person.

A notary public has personal knowledge of the identity of the person appearing before the notary public if the person is personally known to the notary public through dealings sufficient to provide reasonable certainty that the person has the identity claimed. A notary public is considered to have satisfactory evidence of the identity of the person appearing before the notary public if the notary public can identify the person by any of the following means:

- A passport, driver's license, government-issued nondriver identification card, or other form of government-issued identification with the signature or photograph of the individual, which is current or expired not more than three years before performance of the notarial act, and is satisfactory to the officer;
- By verification on oath or affirmation of a credible witness personally appearing before the notary public and known to the notary public or whom the notary public can identify on the basis of such a government-issued identification card;
- Any additional information or credentials required by the notary to assure the identity of the person.

The bill states that a witness is not credible if the witness has a conflict of interest in regards to the transaction. It defines "conflict of interest," as a direct financial or other interest in the transaction at issue, or being named as a party to the transaction.¹⁰

Certifications

The bill requires the person executing a jurat to certify all of the following:

- The signer appeared before the notary public;
- The notary public administered an oath or affirmation to the signer that the statement in the jurat is true and correct;
- The signer signed the document in the presence of the notary public.

Additionally, the oath or affirmation must include the question, "Do you solemnly swear that the statements in this document are true, so help you God?" "Do you affirm, under penalty of perjury, that the statements in this document are true?" or a substantially similar question.¹¹

Electronically notarized documents

The bill expands the list of county government officials that are required to accept electronically notarized documents. Under current law, all of the following county officials are required to accept a digital copy of a document executed electronically by a notary for purposes of approval, transfer, and recording:

¹⁰ R.C. 147.49 and 147.50.

¹¹ R.C. 147.54.

- Auditors;
- Engineers;
- Recorders.

The bill adds clerks of courts of record and deputy registrars to this list.

Additionally, the bill makes the same change with regard to printed copies of electronically notarized documents that contain an authenticator certificate. Note, however, that the bill specifies that an authenticator certificate may not be signed or notarized with an electronic signature, either in person or through an online notarization system.¹²

Occupational regulations

The bill specifies that a notary commission is not an occupation or professional license for the purposes of state laws concerning occupational regulations.¹³ Among other things, those laws establish a general policy of adopting the least restrictive regulation required to address a material harm, and require the General Assembly to review the state's occupational licensing boards at least once every six years.¹⁴

Limited liability companies (LLCs)

Fees collected by the Secretary of State

Under continuing law, a LLC may file a statement of authority with the Secretary of State, affirming the power of a specific person or position to enter into transactions on behalf of the LLC. The LLC may amend or cancel the statement of authority by making a new filing with the Secretary. Furthermore, a person named in a statement authority may file a statement denying the person's authority. The bill specifies that a \$50 fee is required to file a statement of authority, an amendment or cancellation thereof, or a statement of denial. The same fee applies under current law for filing certain documents related to a partnership, including a statement of denial, a statement of dissociation, a statement of disclaimer of general partner state, or a cancellation of disclaimer of general partner state.¹⁵

The bill eliminates the \$50 fee charged by the Secretary of State for a certificate of correction filed with respect to the registration or assumed name of a foreign LLC.¹⁶

Merger certificates

Continuing law allows LLCs to merge with one or more constituent entities (i.e., a party to a merger agreement) upon certain specified conditions. One of those conditions is filing a

¹² R.C. 147.591(B) and (C).

¹³ R.C. 147.011.

¹⁴ R.C. Chapter 4798, not in the bill.

¹⁵ R.C. 111.16(N).

¹⁶ R.C. 111.16(P); R.C. 1706.511 and 1706.513, not in the bill.

merger certificate with the Secretary of State after each constituent entity has approved the merger agreement. Under current law, a merger certificate must include:

- The name and form of each constituent entity, the jurisdiction of its governing statute, and, if any, its registration number;
- The name and form of the surviving entity, the jurisdiction of its government statute, and, if any, a statement that the surviving entity is created pursuant to the merger;
- The effective date of the merger;
- If the surviving merger is to be created pursuant to the merger.

The bill expands this list by requiring the merger certificate to include the name and mailing address of the person or entity that is to provide a copy of the merger agreement in response to any written request made by a shareholder, partner, or other equity holder of a constituent entity.¹⁷

Compensation for intercollegiate student-athletes

The bill revises the Collegiate Student Athlete Law¹⁸ that governs compensation to intercollegiate athletes for use of their name, image, or likeness (NIL). It makes changes throughout the law to refer to an intercollegiate athlete as a “student-athlete.” A student-athlete is an individual who is eligible to participate in, participates in, or has participated in intercollegiate athletics for an institution of higher education (a state institution of higher education or private college). An individual who participates in intramural athletics at an institution or in professional athletics is not considered a student-athlete.¹⁹

Student-athlete compensation by institutions

The bill authorizes an institution to compensate a student-athlete for use of the student-athlete’s NIL. The institution, however, cannot compensate the student-athlete using any fees paid to the institution by or on behalf of students attending that institution. The bill eliminates the prohibition against any institution or athletic authority (an athletic association, conference, or other group or organization with authority over intercollegiate athletics) compensating a prospective student-athlete in relation to the prospective student-athlete’s NIL.²⁰

Such an institution also may provide money, assets, resources, opportunities, services, or other benefits to an institutional marketing associate or third-party entity to incentivize it to facilitate opportunities for a student-athlete to earn compensation for use of the student-athlete’s NIL (NIL compensation). Under the bill, an institutional marketing associate is any third-party entity that enters into a contract with, or otherwise acts on behalf of, an institution or an institution’s intercollegiate athletics department. It does not include an institution or athletic

¹⁷ R.C. 1706.712(B).

¹⁸ R.C. Chapter 3376.

¹⁹ R.C. 3376.01, 3376.02, 3376.03, 3376.04, 3376.06, and 3376.07.

²⁰ R.C. 3376.04 and 3376.09.

authority or a staff member, employee, officer, director, manager, or owner of an institution or athletic authority. A third-party entity is any individual or entity, including an athlete agent, other than an institution or athletic authority.²¹

Institutional prohibitions

Currently, an institution cannot uphold any rule, requirement, standard, or other limitation that prevents a student of that institution from fully participating in intercollegiate athletics because the student earns NIL compensation. The bill also prohibits the institution from doing so because a student-athlete does either of the following:

- Earns any other compensation related to the student-athlete's position on an intercollegiate athletics team's roster;
- Obtains professional representation from an athlete agent or attorney.²²

Athletic authority prohibitions

Currently, an athletic authority cannot prevent a student from participating in intercollegiate athletics because the student earns NIL compensation. The bill also prohibits the athletic authority from doing so because a student-athlete does either of the following:

- Earns any other compensation related to the student-athlete's position on an intercollegiate athletics team's roster;
- Obtains professional representation from an athlete agent or attorney.

The bill also prohibits an athletic authority from doing any of the following:

- Considering a complaint, initiating an investigation, or taking any adverse action against an institution, institutional marketing associate, or third-party entity for engaging in any conduct authorized under the bill;
- Penalizing an institution or student-athlete, or preventing the institution or student-athlete from participating in intercollegiate athletics, because another individual or third-party entity whose purpose includes supporting or benefiting the institution or student-athlete violates a rule or regulation of the athletic authority that addresses NIL compensation;
- Preventing an institution from compensating a student-athlete for use of the student-athlete's NIL or providing any other compensation related to the student-athlete's position on an intercollegiate athletics team's roster;
- Preventing an institution, associate, or entity from identifying, creating, facilitating, negotiating, supporting, assisting with, engaging with, or otherwise enabling opportunities for a student-athlete to earn NIL compensation.

²¹ R.C. 3376.01 and 3376.09.

²² R.C. 3376.02.

Current law prohibits an athletic authority from preventing an institution from fully participating in intercollegiate athletics because a student-athlete at that institution uses the student-athlete's NIL or obtains professional representation in relation to contracts or legal matters regarding opportunities to earn NIL compensation. The bill instead prohibits an athletic authority from preventing an institution from becoming a member of the athletic authority or from participating in intercollegiate athletics sponsored by the athletic authority because a student-athlete does either of the following:

- Earns NIL compensation or any other compensation related to the student-athlete's position on an intercollegiate athletics team's roster;
- Obtains professional representation from an athlete agent or attorney regarding any matter and not just legal matters relating to NIL compensation.

The prohibitions that apply under current law to athletic authorities expressly apply to the National Collegiate Athletic Association (NCAA). The bill eliminates reference to the NCAA with respect to these prohibitions.²³

Additional prohibitions

In addition to continuing law prohibitions, the bill prohibits any institution or athletic authority from doing either of the following:

- Preventing a student-athlete from earning NIL compensation if the student-athlete earns that compensation in accordance with the bill;
- Entering into, renewing, or modifying any agreement that prohibits a student-athlete from earning NIL compensation while engaging in activities that do not relate to academic, athletic department, or official team activities.

Currently, an institution or athletic authority cannot prevent a student-athlete who resides in Ohio from obtaining professional representation in relation to contracts or legal matters regarding opportunities to earn NIL compensation. Under the bill, this prohibition applies with respect to any student-athlete, rather than only a student-athlete who is an Ohio resident. It also applies under the bill with respect to obtaining professional representation from an athlete agent or attorney regarding any matter and not just legal matters relating to NIL compensation.

Under continuing law, an official team activity means all games, practices, exhibitions, scrimmages, team appearances, team photograph sessions, sports camps sponsored by an institution, and other team-organized activities, regardless of whether the activity takes place on or off campus, including individual photograph sessions and news media interviews.²⁴

²³ R.C. 3376.03.

²⁴ R.C. 3376.01, 3376.04, and 3376.06(A), repealed.

NIL contracts

Confidentiality of disclosed contracts

Under continuing law, a student-athlete who intends to enter into a contract providing the student-athlete with NIL compensation must disclose the proposed contract to the student-athlete's institution for review. The bill makes any contract, proposed contract, or related documentation disclosed to an institution confidential and not a public record for purposes of the Public Records Law.²⁵

Minor student-athlete contracts

The bill prohibits a student-athlete under 18 years old from entering into a contract that provides the student-athlete with NIL compensation unless the contract includes the written consent of the student-athlete's parent, guardian, or custodian.²⁶

Contracts for advertisements

Continuing law prohibits a student-athlete from entering into a contract under which a student-athlete, for NIL compensation, advertises for a sponsor and the contract requires the student-athlete to display a sponsor's product or otherwise advertise for a sponsor and the contract requirements conflict with a contract to which an institution is a party. The bill eliminates a specific prohibition regarding the display or advertising under the contract occurring during official team activities or any other time.²⁷

Student-athlete use of school property

Unless authorized by an institution, the bill prohibits a student-athlete, to further the student-athlete's opportunities to earn NIL compensation, from using any of the following property that belongs to the institution:

- Facilities;
- Equipment;
- Apparel;
- Uniforms;
- Intellectual property, including logos, indicia, products protected by copyright, and registered or unregistered trademarks.²⁸

Scholarships

The bill addresses scholarship eligibility for a student-athlete who engages in certain NIL activities. Under continuing law, earning NIL compensation cannot affect a student-athlete's

²⁵ R.C. 3376.06 and R.C. 149.43, not in the bill.

²⁶ R.C. 3376.13.

²⁷ R.C. 3376.06.

²⁸ R.C. 3376.10.

scholarship eligibility or renewal. Additionally, under the bill, a student-athlete's scholarship eligibility or renewal cannot be affected because the student-athlete obtains professional representation from an athlete agent or attorney.²⁹

The bill eliminates a provision that specifies a scholarship from an institution at which a student is enrolled is not NIL compensation. It also eliminates a prohibition against an institution revoking or reducing a scholarship because a student earns NIL compensation.³⁰

Remedies and immunities

Under the bill, a student-athlete alleging an injury because an institution or athletic authority has violated the bill may sue in any court for injunctive relief. An institution, institutional marketing associate, or third-party entity alleging it has been subjected by an athletic authority to any actual or threatened complaint, investigation, penalty, or other adverse action for engaging in any conduct authorized under the bill may sue in any court for damages, injunctive relief, reasonable attorney's fees, or any other appropriate relief.

An institution, associate, or entity is not liable for any damages that result from a student-athlete's inability to earn NIL compensation. An employee of an institution, associate, or entity is not liable for any damages that result from a student-athlete's inability to earn NIL compensation because of a decision or action that routinely occurs in the course of intercollegiate athletics.³¹

Student-athlete employment status

Under continuing law, a student-athlete is not an employee of an institution by participating in its athletic program. Nor, under the bill, is a student-athlete an employee because the institution compensates the student-athlete for use of the student-athlete's NIL.³² Thus, under the bill, it appears that a student-athlete may not be an employee of an institution at least for state labor law purposes because the student-athlete receives NIL compensation from the institution.

It is not clear, however, whether that student-athlete would be considered an employee under federal labor law, including under the federal Fair Labor Standards Act³³ (FLSA) or the National Labor Relations Act³⁴ (NLRA). The FLSA prescribes minimum wage and overtime pay requirements for employees working for employers covered by it.³⁵ With respect to private colleges, the NLRA governs labor relations and collective bargaining between private employers

²⁹ R.C. 3376.02.

³⁰ R.C. 3376.05 (repealed).

³¹ R.C. 3376.12.

³² R.C. 3376.11 (renumbered from R.C. 3345.56).

³³ 29 United States Code (U.S.C.) 201, *et seq.*

³⁴ 29 U.S.C. 151, *et seq.*

³⁵ 29 U.S.C. 206 and 207.

and their employees.³⁶ In determining whether an employment relationship exists for FLSA purposes, the “economic reality” of the relationship between an individual and employer is examined.³⁷ Employment status determinations under the NLRA are made by examining, among other factors, whether the employer has the right to control an individual’s work.³⁸

Limitations

Nothing in the bill does either of the following:

- Requires an institution or athletic authority to enable opportunities for a student-athlete to earn compensation related to the student-athlete’s position on an intercollegiate athletics team’s roster;
- Grants to a student-athlete rights to use an institution’s or athletic authority’s intellectual property to further the student-athlete’s opportunities to earn compensation related to the student-athlete’s position on an intercollegiate athletics team’s roster.

Continuing law also specifies that it does not do either of the above to further a student-athlete’s opportunities to earn NIL compensation.³⁹

Professional representation

As noted above, continuing law and the bill include several prohibitions against certain actions being taken against a student-athlete or institution because a student-athlete obtains professional representation. Under the bill, these prohibitions apply with respect to professional representation obtained from an athlete agent or attorney.⁴⁰ An athlete agent includes anyone who attempts to market an athlete or an athlete’s reputation, who attempts to obtain employment for an athlete as a professional athlete, or who seeks to enter into certain types of athletic contracts with an athlete. To act as an athlete agent, an individual, including an attorney, must hold a certificate of registration or certificate of convenience issued under the Athlete Agent Law.⁴¹ Under continuing law, an athlete agent must include in a contract with an athlete a warning that the athlete may lose eligibility to compete in any amateur or intercollegiate athletics by signing the contract.⁴² The bill does not address this requirement. As noted above, the bill prohibits taking certain actions against an athlete for obtaining representation, so it is not clear how this required contract provision would apply with respect to an athlete agent if the agent

³⁶ See, e.g., 29 U.S.C. 157 and 158.

³⁷ 29 U.S.C. 203, 29 Code of Federal Regulations 795.105, and see *Donovan v. Brandel*, 736 F.2d 1114 (6th Cir. 1984) and *Johnson v. NCAA*, 2024 U.S. App. LEXIS 16953, *30 (3rd Cir. 2024).

³⁸ *SuperShuttle DFW, Inc.*, 367 NLRB No. 75 (2019), slip op. at 1 and see *Dartmouth College v. Service Employees International Union, Local 560*, NLRB Case No. 01-RC-325633, 2024 NLRB Reg. Dir. Dec. LEXIS 17 (February 5, 2024).

³⁹ R.C. 3376.08.

⁴⁰ R.C. 3376.02, 3376.03, and 3376.04.

⁴¹ R.C. 3376.01 and R.C. 4771.01, 4771.06, 4771.07, 4771.08, and 4771.09, not in the bill.

⁴² R.C. 4771.02, not in the bill.

represents the athlete for NIL purposes only. It is possible the agent would have to include the contract provision even though it might not apply.

HISTORY

Action	Date
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