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S.B. 187*
134th General Assembly

Bill Analysis

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Version: As Reported by House State and Local Government

Primary Sponsor: Sen. Antani

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SUMMARY

- Allows intercollegiate athletes to earn compensation from their name, image, or likeness.
- Prohibits an institution of higher education, athletic association, conference, or other group or organization with authority over intercollegiate athletics from taking specified actions regarding an intercollegiate athlete who earns, or obtains representation in relation to earning, compensation from the athlete's name, image, or likeness.
- Specifies prohibitions and requirements with respect to contracts that provide compensation to an intercollegiate athlete for the use of the athlete's name, image, or likeness.
- Specifies that the bill takes effect July 1, 2021.
- Declares an emergency.

DETAILED ANALYSIS

Intercollegiate athlete compensation from name, image, or likeness

The bill prohibits an institution of higher education from upholding any rule, requirement, standard, or other limitation that prevents a student of that institution from fully

* This analysis was prepared before the report of the House State and Local Government Committee appeared in the House Journal. Note that the legislative history may be incomplete.

participating in intercollegiate athletics because the student earns compensation as a result of the use of the student's name, image, or likeness.¹

Under the bill, an athletic association, conference, or other group or organization with authority over intercollegiate athletics, including the National Collegiate Athletic Association or its successor organization, is prohibited from doing either of the following:

1. Preventing a student from fully participating in intercollegiate athletics because the student earns compensation as a result of the use of the student's name, image, or likeness;
2. Preventing an institution from fully participating in intercollegiate athletics because a student of that institution participating in intercollegiate athletics does either of the following:
 - a. Uses the student's name, image, or likeness;
 - b. Obtains professional representation in relation to contracts or legal matters regarding opportunities to earn compensation for use of the student's name, image, or likeness.²

Additionally, an institution, athletic association, conference, or other group or organization with authority over intercollegiate athletics is prohibited from doing any of the following under the bill:

1. Providing a prospective student who intends to participate in intercollegiate athletics with compensation in relation to the prospective student's name, image, or likeness;
2. Preventing a student who participates in intercollegiate athletics (a student athlete) and resides in Ohio from obtaining professional representation in relation to contracts or legal matters regarding opportunities to be compensated for use of the student athlete's name, image, or likeness;
3. Interfering with or preventing a student athlete from fully participating in intercollegiate athletics because the student athlete obtains professional representation in relation to contracts or legal matters regarding opportunities to earn compensation for use of the student athlete's name, image, or likeness.³

Scholarships

The bill specifies that a scholarship from an institution at which a student is enrolled is not considered compensation for use of the student's name, image, or likeness.

Additionally, an institution cannot revoke or reduce a scholarship as a result of a student earning compensation for use of the student's name, image, or likeness if the student earns

¹ R.C. 3376.02.

² R.C. 3376.03.

³ R.C. 3376.04.

that compensation in accordance with the bill. The bill prohibits earning compensation from the use of a student's name, image, or likeness from affecting the student's scholarship eligibility or renewal.⁴

Contracts with intercollegiate athletes

An institution's contract with a student athlete enrolled at the institution is prohibited by the bill from preventing the student from using the student athlete's name, image, or likeness for a commercial purpose when the student is not engaged in official team activities. "Official team activities" means all games, practices, exhibitions, scrimmages, team appearances, team photograph sessions, sports camps sponsored by the 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.

The bill prohibits a student athlete from entering into a contract providing compensation to the student athlete for use of the student's name, image, or likeness (NIL contract) that requires the student athlete to display a sponsor's product, or otherwise advertise for a sponsor, during official team activities or any other time if that requirement is in conflict with a provision of a contract to which an institution is a party.

An institution must designate an official to whom a student athlete who intends to enter into a verbal or written NIL contract must disclose the proposed contract for review. If an institution identifies a conflict between the proposed contract and any existing provisions of a contract to which the institution is a party, the institution has to communicate to the student athlete the relevant contract provision that is in conflict. The bill prohibits a student athlete from entering into the proposed contract with a conflict, but the student athlete may negotiate a revision to the proposed contract to avoid the conflict. A revised proposed contract is subject to review by the institution to ensure compliance with the bill. An institution may establish reasonable policies or standards to address a student athlete's failure to provide the required disclosure or any other failure to comply with the bill's requirements.⁵

The bill allows an institution, athletic association, conference, or other group or organization with authority over intercollegiate athletics to prohibit a student athlete from entering into an NIL contract if under the contract the student athlete's name, image, or likeness is associated with any of the following:

1. Any company that manufactures, markets, or sells, or brand that is associated with, a controlled substance, marijuana product, medical marijuana product, alcoholic product, tobacco product, electronic smoking device, vapor product, or product or device that consists of or contains nicotine that can be ingested into the body;

⁴ R.C. 3376.02 and 3376.05.

⁵ R.C. 3376.06.

2. Any medical marijuana cultivator, processor, laboratory, or retail dispensary licensed under Ohio law⁶ or the laws of another state;
3. Any business engaged in the sale, rental, or exhibition for any form of consideration of adult entertainment that is characterized by an emphasis on the exposure or display of sexual activity;
4. Any casino or entity that sponsors or promotes gambling activities;
5. Any other category of companies, brands, or types of contracts that are similar to those described above that the institution communicates to the student before the student enrolls at the institution.⁷

Exclusions

The bill specifies that it does not do any of the following:

1. Require an institution, athletic association, conference, or other group or organization with authority over intercollegiate athletics to identify, create, facilitate, negotiate, or otherwise enable opportunities for a student to earn compensation for use of the student's name, image, or likeness;
2. Establish or grant to a student any right to use the name, trademarks, services marks, logos, symbols, or any other intellectual property, regardless of whether the intellectual property is registered with the appropriate authority, that belong to an institution, athletic association, conference, or other group or organization with authority over intercollegiate athletics, to further the student's opportunities to earn compensation for use of the student's name, image, or likeness;
3. Limit an institution's rights to establish and enforce any of the following:
 - a. Academic standards, requirements, regulations, or obligations for its students;
 - b. Team rules of conduct or other rules of conduct;
 - c. Standards or policies regarding the governance or operation of or participation in intercollegiate varsity athletics;
 - d. Disciplinary rules and standards generally applicable to all students of the institution.⁸

Effective date

The bill declares an emergency by stating its provisions are necessary to provide intercollegiate athletes in Ohio the right to control their name, image, and likeness before the

⁶ R.C. Chapter 3796.

⁷ R.C. 3376.07.

⁸ R.C. 3376.08.

athletic season begins for the 2021-2022 academic year. If passed as an emergency law, the bill takes effect July 1, 2021.⁹

HISTORY

Action	Date
Introduced	05-25-21
Reported, S. Workforce & Higher Education	06-16-21
Passed Senate (33-0)	06-16-21
Reported, H. State & Local Gov't	---

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⁹ Sections 2 and 3.