

Stricken language would be deleted from and underlined language would be added to present law.  
Act 589 of the Regular Session

State of Arkansas  
94th General Assembly  
Regular Session, 2023

As Engrossed: H3/27/23

# A Bill

HOUSE BILL 1649

By: Representatives M. Shepherd, Hawk, Achor, Brooks, Dalby, Ennett, Eubanks, Evans, K. Ferguson, D. Hodges, Lynch, McGrew, McNair, Painter, Perry, Richmond, T. Shephard, Springer, Tosh, D. Whitaker, Wooten

By: Senators Hester, Irvin, R. Murdock, Crowell, J. Petty, Stone

## For An Act To Be Entitled

AN ACT TO AMEND THE ARKANSAS STUDENT-ATHLETE  
PUBLICITY RIGHTS ACT; TO DECLARE AN EMERGENCY; AND  
FOR OTHER PURPOSES.

## Subtitle

TO AMEND THE ARKANSAS STUDENT-ATHLETE  
PUBLICITY RIGHTS ACT; AND TO DECLARE AN  
EMERGENCY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 4-75-1302(7)(A), concerning the definition of student-athlete used under the Arkansas Student-Athlete Publicity Rights Act, is amended to read as follows:

(7)(A) "Student-athlete" means an individual who:

(i) ~~enrolled~~ Has been accepted into admission or signed a National Letter of Intent or other written agreement to enroll in an institution of higher education within the State of Arkansas; or

(ii) ~~at~~ Is enrolled at an institution of higher education who is eligible to engage in any varsity intercollegiate athletics program at the institution.

SECTION 2. Arkansas Code § 4-75-1303 is amended to read as follows:

4-75-1303. Right to compensation.



(a) Except as prohibited in this subchapter, a student-athlete ~~may~~ shall have the right to enter into a contract and receive compensation for the commercial use of the student-athlete's publicity rights.

(b) An institution of higher education, its supporting foundations, or its authorized entities may identify, create, facilitate, and otherwise enable opportunities for a student-athlete to earn compensation for the commercial use of the student-athlete's publicity rights.

(c) A charitable organization that qualifies as an exempt organization under 26 U.S.C. § 501(c)(3), as it existed on January 1, 2023, shall have the right to compensate student-athletes for the commercial use of the student-athlete's publicity rights.

(d) Except as provided in this subchapter or applicable federal law, an institution of higher education shall not uphold any rule, requirement, standard, or other limitation of an athletic association or athletic conference that prevents a student-athlete from earning compensation for the commercial use of the student-athlete's publicity rights.

~~(e)~~(e) Earning compensation for the commercial use of a student-athlete's publicity rights shall not affect the student-athlete's scholarship eligibility.

~~(d)~~(f) An athletic association, athletic conference, or any other organization with authority over varsity intercollegiate athletics shall not:

(1) Prevent a student-athlete from receiving compensation for the commercial use of the student-athlete's publicity rights under this subchapter;

(2) Penalize a student-athlete for receiving compensation for the commercial use of the student-athlete's publicity rights under this subchapter; or

(3) Prevent an institution of higher education from participating in varsity intercollegiate athletics, or otherwise penalize an institution of higher education, as a result of a student-athlete's receipt of compensation under this subchapter.

SECTION 3. Arkansas Code § 4-75-1304(a), concerning conflicts under the Arkansas Student-Athlete Publicity Rights Act, is amended to read as follows:

(a) A third-party licensee or student-athlete shall not enter into a

contract for the commercial use of the student-athlete's publicity rights if the contract:

(1) Requires the student-athlete to endorse, use, solicit, sell, market, advertise, promote, refer to, mention, display, or otherwise promote the name, image, logo, product, service, purpose, campaign, business, digital or physical address, or location of any third-party licensee or commercial entity during a varsity intercollegiate athletic practice, competition, or other activity;

(2) Conflicts with a term or condition of a contract, policy, rule, regulation, or standard of the student-athlete's committed or enrolled institution of higher education; or

(3) Involves the student-athlete's performance or lack of performance in athletic competition.

SECTION 4. Arkansas Code § 4-75-1305(c), concerning representation under the Arkansas Student-Athlete Publicity Rights Act, is amended to read as follows:

(c) A student-athlete may rescind a publicity rights contract with a third-party licensee or a contract for professional representation related to publicity rights without being held liable for breach of contract and with no obligation to return payments received before giving notice of rescission if the student-athlete is no longer+

~~(1) Enrolled at an institution of higher education;~~

~~(2) Eligible to engage~~ eligible to participate in any varsity intercollegiate athletics program at an institution of higher education; ~~or~~

~~(3) Participating in varsity intercollegiate athletics at an institution of higher education.~~

SECTION 5. Arkansas Code § 4-75-1307(a), concerning the scope of the Arkansas Student-Athlete Publicity Rights Act, is amended to read as follows:

(a) This subchapter does not:

~~(1) Allow a student-athlete to seek or obtain compensation~~  
Require an institution of higher education, its supporting foundations, or its authorized entities to compensate a student-athlete for any use of the student-athlete's publicity rights stated in § 4-75-1110;

(2) Require an institution of higher education or its supporting

foundations or authorized entities, athletic association, conference, or other organization with authority over varsity intercollegiate athletics to identify, create, facilitate, negotiate, or otherwise enable opportunities for a student-athlete to earn compensation for the commercial use of the student-athlete's publicity rights;

(3) Authorize a student-athlete to use the name, nicknames, trademarks, service marks, landmarks, facilities, trade dress, uniforms, songs, mascots, logos, images, symbols, or other intellectual property, whether registered or not, of an institution of higher education, athletic association, conference, or other organization with authority over varsity intercollegiate athletics;

(4) Limit the right of an institution of higher education to establish and enforce:

(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 varsity intercollegiate athletics; or

(D) Disciplinary rules generally applicable to all students of the institution of higher education; or

~~(5) Authorize any prospective student-athlete who may attend an institution of higher education, any third-party licensee, or anyone acting on behalf of the prospective student-athlete to negotiate or receive compensation for the commercial use of the prospective student-athlete's publicity rights before the student-athlete's enrollment in an institution of higher education or practice or competition in varsity intercollegiate athletics; or~~

~~(6)~~ Render student-athletes employees of the institution of higher education based on participation in varsity intercollegiate athletic competition.

SECTION 6. Arkansas Code § 4-75-1308 is amended to read as follows:

4-75-1308. Civil remedy.

(a)(1) An institution of higher education or a student-athlete as defined in § 4-75-1302 has a cause of action for damages against an athlete agent or third-party licensee if the institution of higher education or

student-athlete is adversely affected by an act or omission of the athlete agent, third-party licensee, or anyone acting on behalf of the athlete agent or third-party licensee in violation of this subchapter.

(2) An institution of higher education or student-athlete is adversely affected by an act or omission of an athlete agent, third-party licensee, or anyone acting on behalf of the athlete agent or third-party licensee, only if, because of the act or omission, the institution of higher education or student-athlete:

(A) Is suspended or disqualified from participating in an intercollegiate sport; or

(B) Suffers financial damage.

~~(b)~~(3) A student-athlete has a cause of action under this section only if the student-athlete was enrolled in an institution of higher education at the time of the act or omission.

(b)(1) A person or entity, regardless of residence, shall not give or promise compensation for the use of the name, image, or likeness of a student-athlete enrolled at an institution of higher education located in Arkansas or of a prospective student-athlete who has entered into an enrollment contract with an institution of higher education located in Arkansas with the purpose of recruiting or inducing the student-athlete to enroll at another institution of higher education.

(2) An institution of higher education or its supporting foundations or authorized entities and third-party licensees shall have a cause of action against any party that violates this section.

(c) In an action under this section, a prevailing plaintiff may recover punitive damages, reasonable attorney's fees and costs, and any other reasonable litigation expenses.

(d) An institution of higher education, its employees located within this state, including athletics coaching staff, shall not be liable for any damages related to an intercollegiate student-athlete's ability or inability to earn compensation for the use of the student-athlete's name, image, or likeness resulting from decisions and actions routinely taken within the course of their employment in intercollegiate athletics.

*SECTION 7. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that other intercollegiate*

athletics need a certain amount of time for recruiting and other states are revising their state's name, image, and likeness rights legislation in an attempt to recruit players for intercollegiate athletics; that for purposes of intercollegiate athletic recruitment, establishing the rules for use of a recruit's name, image, and likeness is important; and that this act is immediately necessary because recruits for intercollegiate athletics need to know as soon as practicable what the rules for name, image, and likeness rights are with respect to selecting an intercollegiate athletic program to allow the recruit to properly evaluate intercollegiate athletic programs. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

/s/M. Shepherd

APPROVED: 4/11/23