Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas *As Engrossed: H3/22/21 S4/5/21*
93rd General Assembly **A Bill**
Regular Session, 2021 HOUSE BILL 1671

By: Representatives Shepherd, *McCollum, M. Berry, Brooks, Brown, Christiansen, Cloud, Coleman, Cozart, Dalby, Eaves, Evans, Fortner, Godfrey, Hillman, M. Hodges, L. Johnson, Ladyman, Lynch, Maddox, McCullough, M. McElroy, McNair, Payton, Perry, Rye, Scott, S. Smith, Springer, Vaught, Warren, Watson, D. Whitaker, Wooten, Beaty Jr., Clowney, Fielding, C. Fite, Hudson, McClure*
By: Senators Hester, B. Ballinger, Beckham, L. Chesterfield, J. Dismang, L. Eads, Elliott, J. English, Flippo, J. Hendren, Hill, K. Ingram, B. Johnson, G. Leding, C. Tucker, Irvin

For An Act To Be Entitled

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

Subtitle

TO ESTABLISH THE ARKANSAS STUDENT-ATHLETE PUBLICITY RIGHTS ACT.

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

SECTION 1. Arkansas Code Title 4, Chapter 75, is amended to add an additional subchapter to read as follows:

Subchapter 13 — Arkansas Student-Athlete Publicity Rights Act

4-75-1301. Title.

This subchapter shall be known and may be cited as the "Arkansas Student-Athlete Publicity Rights Act".

4-75-1302. Definitions.

As used in this subchapter:

(1)(A) "Commercial use" means the use of an individual's readily identifiable name, voice, signature, photograph, or likeness:

(i) For advertising, selling, or soliciting

purchases of products, merchandise, goods, or services; or

(ii) On or in connection with products, merchandise, goods, or other commercial activity that is not exempt under this subchapter.

(B) “Commercial use” does not include the use of an individual’s name, voice, signature, photograph, or likeness to identify the individual for the purpose of:

(i) Data collection or data reporting and supplying the data collected or reported; or

(ii) Data processing, data matching, data distribution, or data licensing;

(2) "Image" means a picture or other recognizable visual representation of a student-athlete;

(3) "Likeness" means a reproduction of an image of an individual by any means other than a photograph;

(4) "Name" means:

(A) The first, middle, or last name of a student-athlete; or

(B) When used in a context that reasonably identifies a student-athlete with particularity:

(i) The initials of the student-athlete; or

(ii) The nickname of the student-athlete;

(5) "Photograph" means a reproduction of an image of an individual that readily identifies the individual, whether made by photography, videotape, live transmission, or other means;

(6) "Publicity right" means a right that is recognized under state or federal law that permits an individual to control and profit from commercial use of the individual’s name, image, voice, signature, photograph, or likeness;

(7)(A) "Student-athlete" means an individual enrolled at an institution of higher education who is eligible to engage in any varsity intercollegiate athletics program at the institution.

(B) "Student-athlete" does not include an individual who is permanently ineligible to participate in a particular varsity intercollegiate athletics program for the purposes of the particular varsity intercollegiate athletics program; and

(8)(A) "Third-party licensee" means an individual or entity that

licenses, secures, or uses the publicity rights of a student-athlete or that provides compensation in any form to a current or prospective student-athlete, or anyone on behalf of the student-athlete, in exchange for the student-athlete's using, displaying, referring to, mentioning, endorsing, advertising, selling, marketing, promoting, or soliciting the purchase of a product, merchandise, good, service, organization, or business.

(B) "Third-party licensee" does not include an athletic association, athletic conference, institution of higher education, or nonprofit organization, club, or supporting foundation that is authorized by an institution of higher education and established solely to advance the purposes of the institution of higher education.

4-75-1303. Right to compensation.

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

(b) 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.

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

(d) 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.

4-75-1304. Conflicts.

(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 enrolled institution of higher education; or

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

(b) A contract in violation of this subchapter is void and unenforceable.

4-75-1305. Representation.

(a) An agent, athlete agent, financial advisor, or attorney who is providing professional representation of a student-athlete shall be licensed, as applicable, in this state.

(b) An institution of higher education, athletic association, athletic conference, or other organization with authority over varsity intercollegiate athletics shall not prevent a student-athlete from participating in a varsity intercollegiate sport, or otherwise penalize a student-athlete, for obtaining professional representation in connection with an opportunity to earn compensation for the commercial use of the student-athlete's publicity rights.

(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 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.

4-75-1306. Disclosure.

(a)(1) A student-athlete who enters into a contract related to the commercial use of the student-athlete's publicity rights shall disclose to a designated official of the student-athlete's institution of higher education the existence of the contract, including the contract terms, conditions, parties, and compensation amounts.

(2) The disclosure described in subdivision (a)(1) of this section shall be made within a time period and in a manner designated by the institution of higher education.

(b)(1) A professional representative of a student-athlete for a contractual or legal matter regarding the student-athlete's opportunity to earn compensation for the commercial use of the student-athlete's publicity rights shall disclose to a designated official of the student-athlete's institution of higher education the relationship between the professional representative and the student-athlete and the existence of the contract, including without limitation the contract terms, conditions, parties, and compensation amounts.

(2) The disclosure described in subdivision (b)(1) of this section shall be made within a time period and in a manner designated by the institution of higher education.

4-75-1307. Scope.

(a) This subchapter does not:

(1) Allow a student-athlete to seek or obtain compensation for any use of the student-athlete's publicity rights stated in § 4-75-1110;

(2) Require an institution of higher education, 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;

(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.

(b) Notwithstanding any other provision of this subchapter, a student-athlete participating in varsity intercollegiate athletics is prohibited from earning compensation as a result of the commercial use of the student-athlete's publicity rights in connection with any person or entity related to or associated with the development, promotion, production, distribution, wholesaling, or retailing of:

(1) Adult entertainment, sexually suggestive products, or sex-oriented products, services, conduct, imagery, or inferences;

(2) Alcohol products;

(3) A casino and gambling, including without limitation sports betting and betting in connection with a video game or online game, or on a mobile device;

(4) Tobacco, marijuana, or electronic smoking products and devices;

(5) Pharmaceuticals;

(6) Any dangerous or controlled substance;

(7) Drug paraphernalia;

(8) Weapons, including without limitation firearms and ammunition; or

(9) Any product, substance, or method that is prohibited in competition by an athletic association, athletic conference, or other *organization governing varsity intercollegiate athletic competition.*

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) 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.

(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.

SECTION 2. EFFECTIVE DATE. This act is effective on and after January 1, 2022.

/s/Shepherd