

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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3  
4 A BILL  
5 TO BE ENTITLED  
6 AN ACT  
7

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