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SENATE BILL NO. 223

Offered January 12, 2022

Prefiled January 10, 2022

A BILL to amend and reenact § 54.1-526 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 23.1-408.1, relating to intercollegiate athletics; student-athletes; compensation and representation for name, image, or likeness.

Patron—McPike

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That § 54.1-526 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 23.1-408.1 as follows:

§ 23.1-408.1. Intercollegiate athletics; student-athletes; compensation and representation for name, image, or likeness.

A. As used in this section:

"Athlete agent" means an individual who holds a valid certificate of registration as an athlete agent issued pursuant to Chapter 5.2 (§ 54.1-526 et seq.) of Title 54.1.

"Attorney" means an attorney licensed to practice law in the Commonwealth.

"Compensation" means any type of remuneration or anything of value. "Compensation" does not include any (i) scholarship provided to a student-athlete that covers some or all of the cost of attendance at an institution at which the student-athlete is enrolled or (ii) benefit a student-athlete may receive in accordance with the rules of the relevant athletic association or conference.

"Institution" means a private institution of higher education, associate-degree-granting public institution of higher education, or baccalaureate public institution of higher education.

"Pay-for-performance" means payments and compensation provided to a student-athlete that are contingent on the student-athlete achieving certain performance goals or objectives.

"Prospective student-athlete" means an individual who is eligible to enroll at an institution at a future date and participate in intercollegiate athletics at such institution.

"Student-athlete" means an individual enrolled at an institution who participates in intercollegiate athletics.

B. No institution or agent thereof, athletic association, athletic conference, or other organization with authority over intercollegiate athletics shall:

1. Provide a prospective student-athlete or a student-athlete with compensation for the use of his name, image, or likeness;

2. Prohibit or prevent a student-athlete from earning compensation for the use of his name, image, or likeness, except as otherwise permitted in this section;

3. Prohibit or prevent a student-athlete from obtaining professional representation by an athlete agent or legal representation by an attorney in connection with issues related to name, image, or likeness;

4. Declare a student-athlete ineligible for intercollegiate athletic competition because he earns compensation for the use of his name, image, or likeness or obtains professional representation by an athlete agent or attorney in connection with issues related to name, image, or likeness; or

5. Reduce, cancel, revoke, or not renew an athletic scholarship because a student-athlete earns compensation for the use of his name, image, or likeness or obtains professional representation by an athlete agent or attorney in connection with issues related to name, image, or likeness.

C. No athletic association, athletic conference, or other organization with authority over intercollegiate athletics shall prohibit or prevent an institution from becoming a member of the association, conference, or organization or participating in intercollegiate athletics sponsored by such association, conference, or organization as a consequence of any student-athlete earning compensation for the use of his name, image, or likeness or obtaining representation by an athlete agent or attorney in connection with issues related to name, image, or likeness.

D. No student-athlete shall earn compensation for the use of his name, image, or likeness in connection with any of the following:

1. Alcohol and alcoholic beverages;

2. Adult entertainment;

3. Cannabis, cannabinoids, cannabidiol, or other derivatives, not including hemp or hemp products;

4. Controlled substances, as defined in § 54.1-3401;

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5. Performance enhancing drugs or substances such as steroids or human growth hormone;

6. Drug paraphernalia, as defined in § 18.2-265.1;

7. Tobacco, tobacco products, alternative nicotine products, nicotine vapor products, and similar products and devices;

8. Weapons, including firearms and ammunition for firearms; and

9. Casinos or gambling, including sports betting.

E. No student-athlete or prospective student-athlete shall earn compensation for the use of his name, image, or likeness in exchange for attendance at an institution.

F. No student-athlete shall earn compensation for the use of his name, image, or likeness as pay-for-performance.

G. An institution may prohibit a student-athlete from earning compensation for the use of his name, image, or likeness while the student-athlete is engaged in academic, official team, or athletic department activities, including class, tutoring, competition, practice, travel, academic services, community service, promotional activities, and other athletic department activities.

H. No student-athlete shall use an institution's facilities; apparel; equipment; uniforms; or intellectual property, including logos, indicia, registered and unregistered trademarks, and products protected by copyright, for any opportunity to earn compensation for the use of his name, image, or likeness, unless otherwise permitted by the institution.

I. Prior to executing an agreement concerning the use of his name, image, or likeness, a student-athlete shall disclose such agreement to the institution at which he is enrolled in a manner designated by the institution. If a student-athlete discloses a potential agreement that conflicts with an existing institutional agreement, the institution shall disclose the relevant terms of the conflicting agreement to the student-athlete.

J. An institution may prohibit a student-athlete from using his name, image, or likeness to earn compensation if the proposed use conflicts with an existing institutional agreement.

K. No institution shall, except as otherwise permitted in this section, enter into, renew, or modify any agreement that prohibits a student-athlete from using his name, image, or likeness to earn compensation while the student-athlete is engaged in nonacademic, unofficial team, or non-athletic department activities.

L. Nothing in this section shall be construed to impact the employment status of a student-athlete. No student-athlete shall be considered an employee of an institution based on participation in intercollegiate athletics.

M. Any student-athlete who is aggrieved by any action of an institution or agent thereof, athletic association, athletic conference, or other organization with authority over intercollegiate athletics in violation of any provision of this section may bring an action for injunctive relief.

§ 54.1-526. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Agency contract" means an agreement in which a student-athlete authorizes a person to negotiate or solicit on behalf of the student-athlete a professional sports services contract or endorsement contract.

"Athlete agent" means an individual, whether or not registered under this chapter, who (i) directly or indirectly recruits or solicits a student-athlete to enter into an agency contract or, for compensation, procures employment or offers, promises, attempts, or negotiates to obtain employment for a student-athlete as a professional athlete or member of a professional sports team or organization; (ii) for compensation or in anticipation of compensation related to a student-athlete's participation in athletics (a) serves the student-athlete in an advisory capacity on a matter related to finances, business pursuits, or career management decisions, unless the individual is an employee of an educational institution acting exclusively as an employee of the institution for the benefit of the institution, or (b) manages the business affairs of the student-athlete by providing assistance with bills, payments, contracts, or taxes; ~~or~~ (iii) in anticipation of representing a student-athlete for a purpose related to the student-athlete's participation in athletics (a) gives consideration to the student-athlete or another person, (b) serves the student-athlete in an advisory capacity on a matter related to finances, business pursuits, or career management decisions, or (c) manages the business affairs of the student-athlete by providing assistance with bills, payments, contracts, or taxes*; or (iv) represents a student-athlete in connection with issues related to name, image, or likeness, including negotiating, securing, obtaining, arranging, and managing name, image, or likeness opportunities*. "Athlete agent" does not include an individual who (a) acts solely on behalf of a professional sports team or organization or (b) is a licensed, registered, or certified professional and offers or provides services to a student-athlete customarily provided by members of the profession, unless the individual (1) also recruits or solicits the student-athlete to enter into an agency contract, (2) also, for compensation, procures employment or offers, promises, attempts, or negotiates to obtain employment for the student-athlete as a professional athlete or member of a professional sports team or organization, or (3) receives consideration for providing the services calculated using a different method than for an individual who is not a student-athlete.

"Athletic director" means the individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or the athletic program for females, as appropriate.

"Director" means the Director of the Department of Professional and Occupational Regulation.

"Educational institution" means a public or private (i) elementary school, (ii) secondary school, (iii) technical or vocational school, (iv) community college, or (v) institution of higher education.

"Endorsement contract" means an agreement under which a student-athlete is employed or receives consideration to use on behalf of the other party any value that the student-athlete may have because of publicity, reputation, following, or fame obtained because of athletic ability or performance.

"Enrolled" or "enrolls" means registered for courses and attending athletic practice or class.

"Intercollegiate sport" means a sport played at the collegiate level for which eligibility requirements for participation by a student-athlete are established by a national association that promotes or regulates collegiate athletics.

"Interscholastic sport" means a sport played between educational institutions that are not community colleges or institutions of higher education.

"Licensed, registered, or certified professional" means an individual, other than an athlete agent, who is licensed, registered, or certified as an attorney, dealer in securities, financial planner, insurance agent, real estate broker or sales agent, tax consultant, accountant, or member of a profession by the Commonwealth or a nationally recognized organization that licenses, registers, or certifies members of the profession on the basis of experience, education, or testing.

"Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality or other legal entity.

"Professional sports services contract" means an agreement under which an individual is employed as a professional athlete or agrees to render services as a player on a professional sports team or with a professional sports organization.

"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Recruit or solicit" means an attempt to influence the choice of an athlete agent by a student-athlete or, if the student-athlete is a minor, a parent or guardian of the student-athlete. "Recruit or solicit" does not include giving advice on the selection of a particular agent in a family, coaching, or social situation unless the individual giving the advice does so because of the receipt or anticipated receipt of an economic benefit, directly or indirectly, from the agent.

"Registration" means registration as an athlete agent.

"Sign" means, with present intent to authenticate or adopt a record, (i) to execute or adopt a tangible symbol or (ii) to attach to or logically associate with the record an electronic symbol, sound, or process.

"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

"Student-athlete" means an individual who is eligible to attend an educational institution and engages in, is eligible to engage in, or may be eligible in the future to engage in any interscholastic or intercollegiate sport. "Student-athlete" does not include, for a particular interscholastic or intercollegiate sport, an individual permanently ineligible to participate in that sport.