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SENATE BILL NO. 678

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Education and Health
on February 1, 2024)

(Patron Prior to Substitute—Senator Rouse)

A BILL to amend and reenact § 23.1-408.1 of the Code of Virginia, relating to intercollegiate athletics; student-athletes; compensation for name, image, or likeness.

Be it enacted by the General Assembly of Virginia:

1. That § 23.1-408.1 of the Code of Virginia is amended and reenacted 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.

"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. 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;

2. 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;

3. 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

4. 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~~:

1. *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;

2. *Entertain a complaint, open an investigation, or take any other adverse action against an institution, its supporting foundations, or an entity acting on its behalf, for activity permitted under this section;*

3. *Penalize an institution or a student-athlete or prevent an institution or a student-athlete from participating in intercollegiate athletics because an individual or entity whose purpose includes supporting or benefitting the institution or student-athletes violates its rules or regulations concerning name, image, or likeness;*

4. *Prevent an institution from compensating a student-athlete for the use of his name, image, or likeness; or*

5. *Prevent an institution, its supporting foundations, or an entity acting on its behalf from identifying, creating, negotiating, facilitating, supporting, engaging with, assisting with, or otherwise enabling a name, image, or likeness opportunity for a student-athlete.*

D. Each institution shall develop and submit to the institution's governing board or similar governing body for approval policies or procedures that govern the compensation of a student-athlete for the use of his name, image, or likeness. Each institution may enforce such approved policies or procedures and the provisions of this section.

E. An institution may provide assets, resources, or benefits as an incentive to individuals, companies,

60 *or other entities to provide money, benefits, opportunities, or services to an outside entity that supports*
61 *name, image, or likeness opportunities for the institution's student-athletes.*

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

- 64 1. Alcohol and alcoholic beverages;
- 65 2. Adult entertainment;
- 66 3. Cannabis, cannabinoids, cannabidiol, or other derivatives, not including hemp or hemp products;
- 67 4. Controlled substances, as defined in § 54.1-3401;
- 68 5. Performance enhancing drugs or substances such as steroids or human growth hormone;
- 69 6. Drug paraphernalia, as defined in § 18.2-265.1;
- 70 7. Tobacco, tobacco products, alternative nicotine products, nicotine vapor products, and similar
71 products and devices;
- 72 8. Weapons, including firearms and ammunition for firearms; and
- 73 9. Casinos or gambling, including sports betting.

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

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

82 ~~G.~~ I. Prior to executing an agreement concerning the use of his name, image, or likeness, a
83 student-athlete shall disclose such agreement to the institution at which he is enrolled in a manner
84 designated by the institution. *Any such agreement and any other information disclosed to the institution*
85 *concerning individual student-athletes and name, image, or likeness compensation shall be kept*
86 *confidential and is exempt from the provisions of the Virginia Freedom of Information Act (§ 2.2-3700*
87 *et seq.).* If a student-athlete discloses a potential agreement that conflicts with an existing institutional
88 agreement, the institution shall disclose the relevant terms of the conflicting agreement to the
89 student-athlete.

90 ~~H.~~ J. An institution may prohibit a student-athlete from using his name, image, or likeness to earn
91 compensation if the proposed use conflicts with an existing institutional agreement *or any policy or*
92 *procedure developed and approved pursuant to subsection D.*

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

97 ~~J.~~ L. Nothing in this section shall be construed to impact the employment status of a student-athlete.
98 ~~No student-athlete shall be considered an employee of an institution based on participation in~~
99 ~~intercollegiate athletics or qualify a student-athlete as an employee of an institution solely because the~~
100 ~~student-athlete engages in name, image, or likeness opportunities.~~

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

104 N. *Neither an institution nor its employees, its supporting foundations, or any entity acting on its*
105 *behalf shall be liable for any damages related to a student-athlete's ability or inability to earn*
106 *compensation for the use of the student-athlete's name, image, or likeness.*

107 O. *An institution, its supporting foundations, or an entity acting on its behalf that is subjected to any*
108 *actual or threatened complaint, investigation, penalty, or other adverse action of an athletic association,*
109 *athletic conference, or other organization with authority over intercollegiate athletics for engaging in*
110 *activities permitted under this section may bring an action to recover actual damages and reasonable*
111 *attorney fees and may seek injunctive relief and any other remedy available at law or in equity.*