

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021

A Bill

HOUSE BILL 1671

4
5 By: Representative Shepherd

For An Act To Be Entitled

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

Subtitle

12 TO ESTABLISH THE ARKANSAS STUDENT-ATHLETE
14 PUBLICITY RIGHTS ACT.

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

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

21 Subchapter 13 – Arkansas Student-Athlete Publicity Rights Act

23 4-75-1301. Title.

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

27 4-75-1302. Definitions.

28 As used in this subchapter:

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

31 (i) For advertising, selling, or soliciting
32 purchases of products, merchandise, goods, or services; or

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

35 (B) "Commercial use" does not include the use of an
36 individual's name, voice, signature, photograph, or likeness to identify the



1 individual for the purpose of:

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

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

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

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

10 (4) "Name" means:

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

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

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

16 (ii) The nickname of the student-athlete;

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

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

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

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

31 (8)(A) "Third-party licensee" means an individual or entity that
32 licenses, secures, or uses the publicity rights of a student-athlete or that
33 provides compensation in any form to a current or prospective student-
34 athlete, or anyone on behalf of the student-athlete, in exchange for the
35 student-athlete's using, displaying, referring to, mentioning, endorsing,
36 advertising, selling, marketing, promoting, or soliciting the purchase of a

1 product, merchandise, good, service, organization, or business.

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

7
8 4-75-1303. Right to compensation.

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

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

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

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

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

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

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

32
33 4-75-1304. Conflicts.

34 (a) A third-party licensee or student-athlete shall not enter into a
35 contract for the commercial use of the student-athlete's publicity rights if
36 the contract:

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

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

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

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

14
15 4-75-1305. Representation.

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

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

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

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

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

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

36

1 4-75-1306. Disclosure.

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

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

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

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

21
22 4-75-1307. Scope.

23 (a) This subchapter does not:

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

26 (2) Require an institution of higher education, athletic
27 association, conference, or other organization with authority over varsity
28 intercollegiate athletics to identify, create, facilitate, negotiate, or
29 otherwise enable opportunities for a student-athlete to earn compensation for
30 the commercial use of the student-athlete's publicity rights;

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

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

3 (A) Academic standards, requirements, regulations or
4 obligations for its students;

5 (B) Team rules of conduct or other rules of conduct;

6 (C) Standards or policies regarding the governance or
7 operation of or participation in varsity intercollegiate athletics; or

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

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

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

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

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

28 (2) Alcohol products;

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

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

34 (5) Pharmaceuticals;

35 (6) Any dangerous or controlled substance;

36 (7) Drug paraphernalia;

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

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

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7 SECTION 2. EFFECTIVE DATE. This act is effective on and after January
8 1, 2022.

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