

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

As Engrossed: H3/27/23

A Bill

HOUSE BILL 1649

5 By: Representatives M. Shepherd, Hawk, Achor, Brooks, Dalby, Ennett, Eubanks, Evans, K. Ferguson, D.
6 Hodges, Lynch, McGrew, McNair, Painter, Perry, Richmond, T. Shephard, Springer, Tosh, D. Whitaker,
7 Wooten
8 By: Senators Hester, Irvin, R. Murdock, Crowell, J. Petty, Stone
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For An Act To Be Entitled

11 AN ACT TO AMEND THE ARKANSAS STUDENT-ATHLETE
12 PUBLICITY RIGHTS ACT; TO DECLARE AN EMERGENCY; AND
13 FOR OTHER PURPOSES.
14
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Subtitle

16 TO AMEND THE ARKANSAS STUDENT-ATHLETE
17 PUBLICITY RIGHTS ACT; AND TO DECLARE AN
18 EMERGENCY.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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24 SECTION 1. Arkansas Code § 4-75-1302(7)(A), concerning the definition
25 of student-athlete used under the Arkansas Student-Athlete Publicity Rights
26 Act, is amended to read as follows:

27 (7)(A) "Student-athlete" means an individual who:

28 (i) ~~enrolled~~ Has been accepted into admission or
29 signed a National Letter of Intent or other written agreement to enroll in an
30 institution of higher education within the State of Arkansas; or

31 (ii) ~~at~~ Is enrolled at an institution of higher
32 education who is eligible to engage in any varsity intercollegiate athletics
33 program at the institution.
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35 SECTION 2. Arkansas Code § 4-75-1303 is amended to read as follows:

36 4-75-1303. Right to compensation.



1 (a) Except as prohibited in this subchapter, a student-athlete ~~may~~
2 shall have the right to enter into a contract and receive compensation for
3 the commercial use of the student-athlete's publicity rights.

4 (b) An institution of higher education, its supporting foundations, or
5 its authorized entities may identify, create, facilitate, and otherwise
6 enable opportunities for a student-athlete to earn compensation for the
7 commercial use of the student-athlete's publicity rights.

8 (c) A charitable organization that qualifies as an exempt organization
9 under 26 U.S.C. § 501(c)(3), as it existed on January 1, 2023, shall have the
10 right to compensate student-athletes for the commercial use of the student-
11 athlete's publicity rights.

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

20 ~~(d)~~(f) 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.

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33 SECTION 3. Arkansas Code § 4-75-1304(a), concerning conflicts under
34 the Arkansas Student-Athlete Publicity Rights Act, is amended to read as
35 follows:

36 (a) A third-party licensee or student-athlete shall not enter into a

1 contract for the commercial use of the student-athlete's publicity rights if
2 the contract:

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

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

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

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15 SECTION 4. Arkansas Code § 4-75-1305(c), concerning representation
16 under the Arkansas Student-Athlete Publicity Rights Act, is amended to read
17 as follows:

18 (c) A student-athlete may rescind a publicity rights contract with a
19 third-party licensee or a contract for professional representation related to
20 publicity rights without being held liable for breach of contract and with no
21 obligation to return payments received before giving notice of rescission if
22 the student-athlete is no longer+

23 ~~(1) Enrolled at an institution of higher education;~~

24 ~~(2) Eligible to engage~~ eligible to participate in any varsity
25 intercollegiate athletics program at an institution of higher education; ~~or~~

26 ~~(3) Participating in varsity intercollegiate athletics at an~~
27 ~~institution of higher education.~~

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29 SECTION 5. Arkansas Code § 4-75-1307(a), concerning the scope of the
30 Arkansas Student-Athlete Publicity Rights Act, is amended to read as follows:

31 (a) This subchapter does not:

32 ~~(1) Allow a student-athlete to seek or obtain compensation~~

33 Require an institution of higher education, its supporting foundations, or
34 its authorized entities to compensate a student-athlete for any use of the
35 student-athlete's publicity rights stated in § 4-75-1110;

36 (2) Require an institution of higher education or its supporting

1 foundations or authorized entities, athletic association, conference, or
2 other organization with authority over varsity intercollegiate athletics to
3 identify, create, facilitate, negotiate, or otherwise enable opportunities
4 for a student-athlete to earn compensation for the commercial use of the
5 student-athlete's publicity rights;

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

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

14 (A) Academic standards, requirements, regulations or
15 obligations for its students;

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

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

19 (D) Disciplinary rules generally applicable to all
20 students of the institution of higher education; or

21 ~~(5) Authorize any prospective student-athlete who may attend an~~
22 ~~institution of higher education, any third-party licensee, or anyone acting~~
23 ~~on behalf of the prospective student-athlete to negotiate or receive~~
24 ~~compensation for the commercial use of the prospective student-athlete's~~
25 ~~publicity rights before the student-athlete's enrollment in an institution of~~
26 ~~higher education or practice or competition in varsity intercollegiate~~
27 ~~athletics; or~~

28 ~~(6)~~ Render student-athletes employees of the institution of
29 higher education based on participation in varsity intercollegiate athletic
30 competition.

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32 SECTION 6. Arkansas Code § 4-75-1308 is amended to read as follows:

33 4-75-1308. Civil remedy.

34 (a)(1) An institution of higher education or a student-athlete as
35 defined in § 4-75-1302 has a cause of action for damages against an athlete
36 agent or third-party licensee if the institution of higher education or

1 student-athlete is adversely affected by an act or omission of the athlete
2 agent, third-party licensee, or anyone acting on behalf of the athlete agent
3 or third-party licensee in violation of this subchapter.

4 (2) An institution of higher education or student-athlete is
5 adversely affected by an act or omission of an athlete agent, third-party
6 licensee, or anyone acting on behalf of the athlete agent or third-party
7 licensee, only if, because of the act or omission, the institution of higher
8 education or student-athlete:

9 (A) Is suspended or disqualified from participating in an
10 intercollegiate sport; or

11 (B) Suffers financial damage.

12 ~~(b)(3)~~ (3) A student-athlete has a cause of action under this
13 section only if the student-athlete was enrolled in an institution of higher
14 education at the time of the act or omission.

15 (b)(1) A person or entity, regardless of residence, shall not give or
16 promise compensation for the use of the name, image, or likeness of a
17 student-athlete enrolled at an institution of higher education located in
18 Arkansas or of a prospective student-athlete who has entered into an
19 enrollment contract with an institution of higher education located in
20 Arkansas with the purpose of recruiting or inducing the student-athlete to
21 enroll at another institution of higher education.

22 (2) An institution of higher education or its supporting
23 foundations or authorized entities and third-party licensees shall have a
24 cause of action against any party that violates this section.

25 (c) In an action under this section, a prevailing plaintiff may
26 recover punitive damages, reasonable attorney's fees and costs, and any other
27 reasonable litigation expenses.

28 (d) An institution of higher education, its employees located within
29 this state, including athletics coaching staff, shall not be liable for any
30 damages related to an intercollegiate student-athlete's ability or inability
31 to earn compensation for the use of the student-athlete's name, image, or
32 likeness resulting from decisions and actions routinely taken within the
33 course of their employment in intercollegiate athletics.

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35 SECTION 7. EMERGENCY CLAUSE. It is found and determined by the
36 General Assembly of the State of Arkansas that other intercollegiate

1 athletics need a certain amount of time for recruiting and other states are
2 revising their state's name, image, and likeness rights legislation in an
3 attempt to recruit players for intercollegiate athletics; that for purposes
4 of intercollegiate athletic recruitment, establishing the rules for use of a
5 recruit's name, image, and likeness is important; and that this act is
6 immediately necessary because recruits for intercollegiate athletics need to
7 know as soon as practicable what the rules for name, image, and likeness
8 rights are with respect to selecting an intercollegiate athletic program to
9 allow the recruit to properly evaluate intercollegiate athletic programs.
10 Therefore, an emergency is declared to exist, and this act being immediately
11 necessary for the preservation of the public peace, health, and safety shall
12 become effective on:

13 (1) The date of its approval by the Governor;

14 (2) If the bill is neither approved nor vetoed by the Governor,
15 the expiration of the period of time during which the Governor may veto the
16 bill; or

17 (3) If the bill is vetoed by the Governor and the veto is
18 overridden, the date the last house overrides the veto.

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20 /s/M. Shepherd
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