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S.B. 187
134th General Assembly

Bill Analysis

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Version: As Passed by the House

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SUMMARY

Compensation from name, image, or likeness

- Allows intercollegiate athletes to earn compensation from their name, image, or likeness (NIL).
- Prohibits an institution of higher education, athletic association, conference, or other group or organization with authority over intercollegiate athletics from taking specified actions regarding an intercollegiate athlete who earns, or obtains representation in relation to earning, compensation from the athlete's NIL.
- Includes limitations with respect to contracts that provide compensation to an intercollegiate athlete for the use of the athlete's NIL.

Interscholastic and intercollegiate single-sex athletic teams

- Requires each school that participates in athletic competitions or events administered by an organization that regulates interscholastic athletic conferences or events to designate separate single-sex athletic teams based on the sex of the participants.
- Requires each state institution of higher education or private, nonprofit college or university that is a member of the NCAA, NAIA, or NJCAA to designate separate single-sex athletic teams and sports based on the sex of the participants.
- Authorizes an athletic participant to file a civil action if the participant is deprived of an athletic opportunity or suffers harm as a result of a violation of the bill's single-sex participation requirements or if the participant is subject to retaliation for reporting such a violation.
- Prohibits a state agency or political subdivision, accrediting organization, or athletic association that operates or has business activities in Ohio from taking adverse actions

against a school, school district, or college or university that complies with the bill's single-sex participation requirements.

- Entitles certain provisions of the bill the "Save Women's Sports Act."

DETAILED ANALYSIS

Compensation from name, image, or likeness

The bill prohibits an institution of higher education from upholding any rule, requirement, standard, or other limitation that prevents a student of that institution from fully participating in intercollegiate athletics because the student earns compensation as a result of the use of the student's name, image, or likeness (NIL).¹

It also prohibits an athletic association, conference, or other group or organization with authority over intercollegiate athletics, including the National Collegiate Athletic Association (NCAA) or its successor organization (collectively, "athletic authority") from doing either of the following:

1. Preventing a student from fully participating in intercollegiate athletics because the student earns compensation as a result of the use of the student's NIL;
2. Preventing an institution from fully participating in intercollegiate athletics because a student of that institution participating in intercollegiate athletics does either of the following:
 - a. Uses the student's NIL;
 - b. Obtains professional representation in relation to contracts or legal matters regarding opportunities to earn compensation for use of the student's NIL.²

Additionally, institutions and athletic authorities are prohibited from doing any of the following:

1. Providing a prospective student who intends to participate in intercollegiate athletics with compensation in relation to the prospective student's NIL;
2. Preventing a student who participates in intercollegiate athletics (a student athlete) and resides in Ohio from obtaining professional representation in relation to contracts or legal matters regarding opportunities to be compensated for use of the student athlete's NIL;
3. Interfering with or preventing a student athlete from fully participating in intercollegiate athletics because the student athlete obtains professional representation in relation to

¹ R.C. 3376.02.

² R.C. 3376.03.

contracts or legal matters regarding opportunities to earn compensation for use of the student athlete's NIL.³

Scholarships

Under the bill, a scholarship from an institution at which a student is enrolled is not considered compensation for use of the student's NIL.

Additionally, an institution cannot revoke or reduce a scholarship as a result of a student earning compensation for use of the student's NIL if the student earns that compensation in accordance with the bill. Earning compensation from the use of a student's NIL cannot affect the student's scholarship eligibility or renewal.⁴

Contracts with intercollegiate athletes

Contract limitations

Under the bill, an institution's contract with a student athlete enrolled at the institution cannot prevent the student from using the student athlete's NIL for a commercial purpose when the student is not engaged in official team activities. "Official team activities" means all games, practices, exhibitions, scrimmages, team appearances, team photograph sessions, sports camps sponsored by the institution, and other team-organized activities, regardless of whether the activity takes place on or off campus, including individual photograph sessions and news media interviews.

The bill prohibits a student athlete from entering into a contract providing compensation to the student athlete for use of the student's NIL (NIL contract) that requires the student athlete to display a sponsor's product, or otherwise advertise for a sponsor, during official team activities or any other time if that requirement is in conflict with a provision of a contract to which an institution is a party.

Disclosure and review

An institution must designate an official to whom a student athlete who intends to enter into a verbal or written NIL contract must disclose the proposed contract for review. If an institution identifies a conflict between the proposed contract and any existing provisions of a contract to which the institution is a party, the institution has to communicate to the student athlete the relevant contract provision that is in conflict. The student athlete cannot enter into the proposed contract with a conflict, but the student athlete may negotiate a revision to the proposed contract to avoid the conflict. A revised proposed contract is subject to review by the institution to ensure compliance with the bill.

³ R.C. 3376.04.

⁴ R.C. 3376.02 and 3376.05.

An institution may establish reasonable policies or standards to address a student athlete's failure to provide the required disclosure or any other failure to comply with the bill's requirements.⁵

Companies, brands, and types of contracts

The bill allows an institution or athletic authority to prohibit a student athlete from entering into an NIL contract if under the contract the student athlete's NIL is associated with any of the following:

1. Any company that manufactures, markets, or sells, or brand that is associated with, a controlled substance, marijuana product, medical marijuana product, alcoholic product, tobacco product, electronic smoking device, vapor product, or product or device that consists of or contains nicotine that can be ingested into the body;
2. Any medical marijuana cultivator, processor, laboratory, or retail dispensary licensed under Ohio law⁶ or the laws of another state;
3. Any business engaged in the sale, rental, or exhibition for any form of consideration of adult entertainment that is characterized by an emphasis on the exposure or display of sexual activity;
4. Any casino or entity that sponsors or promotes gambling activities;
5. Any other category of companies, brands, or types of contracts that are similar to those described above that the institution communicates to the student before the student enrolls at the institution.⁷

Exclusions

The bill does not do any of the following:

1. Require an institution or athletic authority to identify, create, facilitate, negotiate, or otherwise enable opportunities for a student to earn compensation for use of the student's NIL;
2. Establish or grant to a student any right to use the name, trademarks, services marks, logos, symbols, or any other intellectual property, regardless of whether the intellectual property is registered with the appropriate authority, that belong to an institution or athletic authority to further the student's opportunities to earn compensation for use of the student's NIL;
3. Limit an institution's rights to establish and enforce any of the following:
 - a. Academic standards, requirements, regulations, or obligations for its students;

⁵ R.C. 3376.06.

⁶ R.C. Chapter 3796.

⁷ R.C. 3376.07.

- b. Team rules of conduct or other rules of conduct;
- c. Standards or policies regarding the governance or operation of or participation in intercollegiate varsity athletics;
- d. Disciplinary rules and standards generally applicable to all students of the institution.⁸

Effective date

The bill includes a provision that states that it takes effect July 1, 2021. However, because the House of Representatives did not approve retaining the emergency clause, the bill's effective date will be the 91st day after it is filed with the Secretary of State.⁹

Other NIL authority

The bill's NIL provisions were enacted in H.B. 110 of the 134th General Assembly and take effect September 30, 2021. On June 28, 2021, Governor DeWine signed Executive Order 2021-10D to allow intercollegiate athletes enrolled at Ohio institutions of higher education to earn compensation from their NIL. The Order, which is similar to the NIL provisions, remains in effect until superseded by state or federal law.¹⁰

Additionally, on June 30, 2021, the NCAA's governance bodies adopted a uniform interim policy that suspends NCAA rules prohibiting intercollegiate athletes from earning compensation for their NIL. Under the policy, student athletes may engage in NIL activities that are consistent with the law of the state where the institution at which the student is enrolled is located without violating NCAA NIL rules.¹¹

Interscholastic and intercollegiate single-sex athletic teams

The bill requires each school that participates in athletic competitions or events administered by an organization that regulates interscholastic athletic conferences or events to designate athletic teams based on the sex of participants. Each school must have separate single-sex teams for participants of the female sex within female sports divisions, separate teams for participants of the male sex within male sports divisions, and, if applicable, co-ed teams for participants of both sexes within co-ed sports divisions.¹²

The bill also requires each state institution of higher education or private, nonprofit college or university that is a member of the NCAA, the National Association of Intercollegiate Athletics (NAIA), or the National Junior College Athletic Association (NJCAA) to designate

⁸ R.C. 3376.08.

⁹ Sections 2.

¹⁰ Governor Mike DeWine, *Executive Order 2021-10D*, available [here](#).

¹¹ National Collegiate Athletic Association, *NCAA Adopts Interim Name, Image, and Likeness Policy*, available [here](#).

¹² R.C. 3313.5317(A).

intercollegiate athletic teams and sports based on the sex of the participants. Each state institution and private college must have separate single-sex teams for participants of the female sex, separate teams for participants of the male sex, and if applicable, co-ed teams for participants of both sexes.¹³

The bill specifically prohibits individuals of the male sex to participate in interscholastic and intercollegiate athletics on teams or in athletic competitions designated only for participants of the female sex.¹⁴ However, nothing in the bill is meant to restrict the eligibility of any student to participate on athletic teams or competitions that are designated as male or co-ed.¹⁵

Civil action authorized

An athletic participant may file a civil action for injunctive relief, damages, and any other relief available, if the participant is deprived of an athletic opportunity or suffers a direct or indirect harm as a result of a violation of the bill's single-sex participation requirements. Similarly, a participant may file a civil action for retaliatory or other adverse action for reporting such a violation. A suit may be filed against a school, school district, interscholastic conference, organization that regulates interscholastic athletics, or college or university.¹⁶

Furthermore, state agencies and political subdivisions, accrediting organizations, and athletic associations that operate or have business activities in Ohio are prohibited from processing a complaint, beginning an investigation, or taking any other adverse action against a school, school district, or college or university for complying with the bill's single-sex participation requirements.¹⁷ Therefore, a school, school district, or college or university that suffers any direct or indirect harm as a result of a violation of this prohibition also may file a civil action against the entity that takes the retaliatory or other adverse action.¹⁸

The bill specifies that plaintiffs who prevail on such claims are entitled to monetary damages, including for any psychological, emotional, or physical harm suffered, reasonable attorney's fees and costs, and any other appropriate relief.¹⁹

Statute of limitations

The bill requires that any civil action brought as a result of a violation of the bill's single-sex participation requirements must be initiated within two years after the date on which the violation occurs.²⁰

¹³ R.C. 3345.561(B).

¹⁴ R.C. 3313.5317(B) and 3345.561(C).

¹⁵ R.C. 3313.5317(C) and 3345.561(D).

¹⁶ R.C. 3313.5317(E) and 3345.561(F).

¹⁷ R.C. 3313.5317(D) and 3345.561(E).

¹⁸ R.C. 3313.5317(E) and 3345.561(F).

¹⁹ R.C. 3313.5317(F) and 3345.561(G).

HISTORY

Action	Date
Introduced	05-25-21
Reported, S. Workforce & Higher Education	06-16-21
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²⁰ R.C. 3313.5317(F) and 3345.561(G).