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H.B. 660
135th General Assembly

Bill Analysis

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Version: As Reported by House Civil Justice

Primary Sponsors: Reps. Mathews and Edwards

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SUMMARY

- Authorizes an institution of higher education (a state institution of higher education or a private college) to compensate a student-athlete for use of the student-athlete's name, image, or likeness (NIL).
- Specifies that a student-athlete is not an employee because the institution compensates the student-athlete for use of the student-athlete's NIL.
- Prohibits a student-athlete from using specified property belonging to an institution to further opportunities for the student-athlete to earn NIL compensation unless authorized by the institution.
- Authorizes an institution to provide money, resources, or other benefits to an institutional marketing associate to incentivize it to facilitate opportunities for student-athletes to earn NIL compensation.
- Prohibits an institution, athletic association, conference, or other group or organization with authority over intercollegiate athletics from taking specified actions regarding a student-athlete for obtaining representation from an athlete agent or attorney or for earning NIL or any other athletics-related compensation.
- Makes any contract or proposed contract providing a student-athlete with NIL compensation that is disclosed to an institution as required under continuing law confidential and not a public record for purposes of the Public Records Law.
- Authorizes student-athletes, institutions, and institutional marketing associates to sue for violations of the bill and provides immunity to institutions and associates and their employees for damages resulting from a student-athlete's inability to earn NIL compensation.

- Prohibits a student-athlete under age 18 from entering into a contract that provides the student-athlete with NIL compensation unless the contract includes the written consent of the student-athlete's parent, guardian, or custodian.

DETAILED ANALYSIS

Collegiate Student Athlete Law

The bill revises the Collegiate Student Athlete Law¹ that governs compensation to intercollegiate athletes for use of their name, image, or likeness (NIL). It makes changes throughout the law to refer to an intercollegiate athlete as a "student-athlete." A student-athlete is an individual who is eligible to participate in, participates in, or has participated in intercollegiate athletics for an institution of higher education (a state institution of higher education or private college). An individual who participates in intramural athletics at an institution or in professional athletics is not considered a student-athlete.²

Student-athlete compensation by institutions

The bill authorizes an institution to compensate a student-athlete for use of the student-athlete's NIL. The institution, however, cannot compensate the student-athlete using any fees paid to the institution by or on behalf of students attending that institution. The bill eliminates the prohibition against any institution or athletic authority (an athletic association, conference, or other group or organization with authority over intercollegiate athletics) compensating a prospective student-athlete in relation to the prospective student-athlete's NIL.³

Such an institution also may provide money, assets, resources, opportunities, services, or other benefits to an institutional marketing associate to incentivize it to facilitate opportunities for a student-athlete to earn compensation for use of the student-athlete's NIL (NIL compensation). Under the bill, an institutional marketing associate is any individual or entity, including an athlete agent, that enters into a contract with, or otherwise acts on behalf of, an institution or an institution's intercollegiate athletics department. It does not include an institution or athletic authority or a staff member, employee, officer, director, manager, or owner of an institution or athletic authority.⁴

Institutional prohibitions

Currently, an institution cannot uphold any rule, requirement, standard, or other limitation that prevents a student of that institution from fully participating in intercollegiate athletics because the student earns NIL compensation. The bill also prohibits the institution from doing so because a student-athlete does either of the following:

¹ R.C. Chapter 3376.

² R.C. 3376.01, 3376.02, 3376.03, 3376.04, 3376.06, and 3376.07.

³ R.C. 3376.04 and 3376.09.

⁴ R.C. 3376.01 and 3376.09.

- Earns any other compensation related to the student-athlete's position on an intercollegiate athletics team's roster;
- Obtains professional representation from an athlete agent or attorney.⁵

Athletic authority prohibitions

Currently, an athletic authority cannot prevent a student from participating in intercollegiate athletics because the student earns NIL compensation. The bill also prohibits the athletic authority from doing so because a student-athlete does either of the following:

- Earns any other compensation related to the student-athlete's position on an intercollegiate athletics team's roster;
- Obtains professional representation from an athlete agent or attorney.

The bill also prohibits an athletic authority from doing any of the following:

- Considering a complaint, initiating an investigation, or taking any adverse action against an institution or institutional marketing associate for engaging in any conduct authorized under the bill;
- Penalizing an institution or student-athlete, or preventing the institution or student-athlete from participating in intercollegiate athletics, because another individual or third-party entity whose purpose includes supporting or benefiting the institution or student-athlete violates a rule or regulation of the athletic authority that addresses NIL compensation;
- Preventing an institution from compensating a student-athlete for use of the student-athlete's NIL or any other compensation related to the student-athlete's position on an intercollegiate athletics team's roster;
- Preventing an institution or associate from identifying, creating, facilitating, negotiating, supporting, assisting with, engaging with, or otherwise enabling opportunities for a student-athlete to earn NIL compensation.

Current law prohibits an athletic authority from preventing an institution from fully participating in intercollegiate athletics because a student-athlete at that institution uses the student-athlete's NIL or obtains professional representation in relation to contracts or legal matters regarding opportunities to earn NIL compensation. The bill instead prohibits an athletic authority from preventing an institution from becoming a member of the athletic authority or from participating in intercollegiate athletics sponsored by the athletic authority because a student-athlete does either of the following:

- Earns NIL compensation or any other compensation related to the student-athlete's position on an intercollegiate athletics team's roster;
- Obtains professional representation from an athlete agent or attorney regarding any matter and not just legal matters relating to NIL compensation.

⁵ R.C. 3376.02.

The prohibitions that apply under current law to athletic authorities expressly apply to the National Collegiate Athletic Association (NCAA). The bill eliminates reference to the NCAA with respect to these prohibitions.⁶

Additional prohibitions

In addition to continuing law prohibitions, the bill prohibits any institution or athletic authority from doing either of the following:

- Preventing a student-athlete from earning NIL compensation if the student-athlete earns that compensation in accordance with the bill;
- Entering into, renewing, or modifying any agreement that prohibits a student-athlete from earning NIL compensation while engaging in activities that do not relate to academic, athletic department, or official team activities.

Currently, an institution or athletic authority cannot prevent a student-athlete who resides in Ohio from obtaining professional representation in relation to contracts or legal matters regarding opportunities to earn NIL compensation. Under the bill, this prohibition applies with respect to any student-athlete, rather than only a student-athlete who is an Ohio resident. It also applies under the bill with respect to obtaining professional representation from an athlete agent or attorney regarding any matter and not just legal matters relating to NIL compensation.

Under continuing law, an official team activity means all games, practices, exhibitions, scrimmages, team appearances, team photograph sessions, sports camps sponsored by an 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.⁷

NIL contracts

Confidentiality of disclosed contracts

Under continuing law, a student-athlete who intends to enter into a contract providing the student-athlete with NIL compensation must disclose the proposed contract to the student-athlete's institution for review. The bill makes any contract, proposed contract, or related documentation disclosed to an institution confidential and not a public record for purposes of the Public Records Law.⁸

Minor student-athlete contracts

The bill prohibits a student-athlete under 18 years old from entering into a contract that provides the student-athlete with NIL compensation unless the contract includes the written consent of the student-athlete's parent, guardian, or custodian.⁹

⁶ R.C. 3376.03.

⁷ R.C. 3376.01, 3376.04, and 3376.06(A), repealed.

⁸ R.C. 3376.06 and R.C. 149.43, not in the bill.

⁹ R.C. 3376.13.

Contracts for advertisements

Continuing law prohibits a student-athlete from entering into a contract under which a student-athlete, for NIL compensation, advertises for a sponsor and the contract requires the student-athlete to display a sponsor's product or otherwise advertise for a sponsor and the contract requirements conflict with a contract to which an institution is a party. The bill eliminates a specific prohibition regarding the display or advertising under the contract occurring during official team activities or any other time.¹⁰

Student-athlete use of school property

Unless authorized by an institution, the bill prohibits a student-athlete, to further the student-athlete's opportunities to earn NIL compensation, from using any of the following property that belongs to the institution:

- Facilities;
- Equipment;
- Apparel;
- Uniforms;
- Intellectual property, including logos, indicia, products protected by copyright, and registered or unregistered trademarks.¹¹

Scholarships

The bill addresses scholarship eligibility for a student-athlete who engages in certain NIL activities. Under continuing law, earning NIL compensation cannot affect a student-athlete's scholarship eligibility or renewal. Additionally, under the bill, a student-athlete's scholarship eligibility or renewal cannot be affected because the student-athlete obtains professional representation from an athlete agent or attorney.¹²

The bill eliminates a provision that specifies a scholarship from an institution at which a student is enrolled is not NIL compensation. It also eliminates a prohibition against an institution revoking or reducing a scholarship because a student earns NIL compensation.¹³

Remedies and immunities

Under the bill, a student-athlete alleging an injury because an institution or athletic authority has violated the bill may sue in any court for injunctive relief. An institution or institutional marketing associate alleging it has been subjected by an athletic authority to any actual or threatened complaint, investigation, penalty, or other adverse action for engaging in

¹⁰ R.C. 3376.06.

¹¹ R.C. 3376.10.

¹² R.C. 3376.02.

¹³ R.C. 3376.05 (repealed).

any conduct authorized under the bill may sue in any court for damages, injunctive relief, reasonable attorney's fees, or any other appropriate relief.

An institution or associate is not liable for any damages that result from a student-athlete's inability to earn NIL compensation. An employee of an institution or associate is not liable for any damages that result from a student-athlete's inability to earn NIL compensation because of a decision or action that routinely occurs in the course of intercollegiate athletics.¹⁴

Student-athlete employment status

Under continuing law, a student-athlete is not an employee of an institution by participating in its athletic program. Nor, under the bill, is a student-athlete an employee because the institution compensates the student-athlete for use of the student-athlete's NIL.¹⁵ Thus, under the bill, it appears that a student-athlete may not be an employee of an institution at least for state labor law purposes because the student-athlete receives NIL compensation from the institution.

It is not clear, however, whether that student-athlete would be considered an employee under federal labor law, including under the federal Fair Labor Standards Act¹⁶ (FLSA) or the National Labor Relations Act¹⁷ (NLRA). The FLSA prescribes minimum wage and overtime pay requirements for employees working for employers covered by it.¹⁸ With respect to private colleges, the NLRA governs labor relations and collective bargaining between private employers and their employees.¹⁹ In determining whether an employment relationship exists for FLSA purposes, the "economic reality" of the relationship between an individual and employer is examined.²⁰ Employment status determinations under the NLRA are made by examining, among other factors, whether the employer has the right to control an individual's work.²¹

Professional representation

As noted above, continuing law and the bill include several prohibitions against certain actions being taken against a student-athlete or institution because a student-athlete obtains professional representation. Under the bill, these prohibitions apply with respect to professional

¹⁴ R.C. 3376.12.

¹⁵ R.C. 3376.11 (renumbered from R.C. 3345.56).

¹⁶ 29 United States Code (U.S.C.) 201, *et seq.*

¹⁷ 29 U.S.C. 151, *et seq.*

¹⁸ 29 U.S.C. 206 and 207.

¹⁹ See, e.g., 29 U.S.C. 157 and 158.

²⁰ 29 U.S.C. 203, 29 Code of Federal Regulations 795.105, and see *Donovan v. Brandel*, 736 F.2d 1114 (6th Cir. 1984) and *Johnson v. NCAA*, 2024 U.S. App. LEXIS 16953, *30 (3rd Cir. 2024).

²¹ *SuperShuttle DFW, Inc.*, 367 NLRB No. 75 (2019), slip op. at 1 and see *Dartmouth College v. Service Employees International Union, Local 560*, NLRB Case No. 01-RC-325633, 2024 NLRB Reg. Dir. Dec. LEXIS 17 (February 5, 2024).

representation obtained from an athlete agent or attorney.²² An athlete agent includes anyone who attempts to market an athlete or an athlete's reputation, who attempts to obtain employment for an athlete as a professional athlete, or who seeks to enter into certain types of athletic contracts with an athlete. To act as an athlete agent, an individual, including an attorney, must hold a certificate of registration or certificate of convenience issued under the Athlete Agent Law.²³ Under continuing law, an athlete agent must include in a contract with an athlete a warning that the athlete may lose eligibility to compete in any amateur or intercollegiate athletics by signing the contract.²⁴ The bill does not address this requirement. As noted above, the bill prohibits taking certain actions against an athlete for obtaining representation, so it is not clear how this required contract provision would apply with respect to an athlete agent if the agent represents the athlete for NIL purposes only. It is possible the agent would have to include the contract provision even though it might not apply.

HISTORY

Action	Date
Introduced	09-03-24
Reported, H. Civil Justice	12-04-24

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²² R.C. 3376.02, 3376.03, and 3376.04.

²³ R.C. 3376.01 and R.C. 4771.01, 4771.06, 4771.07, 4771.08, and 4771.09, not in the bill.

²⁴ R.C. 4771.02, not in the bill.