Indicates New Matter

Amended

May 07, 2024

H. 4957

Introduced by Reps. Hiott, Erickson, G. M. Smith, Hayes, McGinnis, Rose, Elliott, Alexander, Schuessler, Calhoon, M. M. Smith, Davis, T. Moore, B. Newton, Neese, Oremus, Hixon, Taylor, Guest, Sessions, Guffey, Ballentine, Pope, Willis, Bannister, Kirby, Henegan, Hartnett, Williams, Gilliard and Rivers

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Read the first time February 15, 2024

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A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 59-158-10, RELATING TO DEFINITIONS CONCERNING INTERCOLLEGIATE ATHLETES' COMPENSATION FOR NAME, IMAGE, OR LIKENESS, SO AS TO REVISE SEVERAL DEFINITIONS; BY AMENDING SECTION 59-158-20, RELATING TO THE AUTHORIZATION OF COMPENSATION FOR USE OF AN INTERCOLLEGIATE ATHLETE’S NAME, IMAGE, OR LIKENESS, SO AS TO DELETE EXISTING LANGUAGE AND PROVIDE INSTITUTIONS OF HIGHER LEARNING AND CERTAIN AGENTS OF THE INSTITUTIONS MAY ENGAGE IN CERTAIN ACTIONS THAT MAY ENABLE INTERCOLLEGIATE ATHLETEs TO EARN COMPENSATION FOR USE OF THE NAME, IMAGE, OR LIKENESS OF THE ATHLETE, AND TO PROVIDE THE INSTITUTIONS ALSO MAY PERMIT INTERCOLLEGIATE ATHLETES TO USE TRADEMARKS AND FACILITIES OF THE INSTITUTION, AMONG OTHER THINGS; BY AMENDING SECTION 59-158-30, RELATING TO THE EFFECTS OF NAME, IMAGE, AND LIKENESS COMPENSATION ON GRANT-IN-AID OR ATHLETIC ELIGIBILITY, SO AS TO DELETE EXISTING LANGUAGE AND PROVIDE NAME, IMAGE, OR LIKENESS CONTRACTS MAY NOT EXTEND BEYOND THE INTERCOLLEGIATE ATHLETE'S ELIGIBILITY TO PARTICIPATE IN AN INTERCOLLEGIATE ATHLETICS PROGRAM AT AN INSTITUTION OF HIGHER LEARNING; BY AMENDING SECTION 59-158-40, RELATING TO ALLOWED AND PROHIBITED ACTIONS CONCERNING INTERCOLLEGIATE ATHLETEs’ NAME, IMAGE, AND LIKENESS-RELATED MATTERS, SO AS TO DELETE EXISTING LANGUAGE AND PROVIDE LIMITATIONS ON LIABILITY FOR INSTITUTION OF HIGHER LEARNING EMPLOYEES FOR DAMAGES RESULTING FROM CERTAIN ROUTINE DECISIONS MADE IN INTERCOLLEGIATE ATHLETICS, AND TO PROHIBIT CERTAIN CONDUCT BY ATHLETIC ASSOCIATIONS, ATHLETIC CONFERENCES, OR OTHER GROUPS WITH AUTHORITY OVER INTERCOLLEGIATE ATHLETIC PROGRAMS AT PUBLIC INSTITUTIONS OF HIGHER LEARNING; BY AMENDING SECTION 59-158-50, RELATING TO GOOD ACADEMIC STANDING REQUIRED FOR PARTICIPATION IN NAME, IMAGE, AND LIKENESS ACTIVITIES, SO AS TO DELETE EXISTING PROVISIONS AND PROVIDE CERTAIN MATTERS CONCERNING NAME, IMAGE, AND LIKENESS AGREEMENTS MAY NOT BE CONSIDERED PUBLIC RECORDS SUBJECT TO AN EXCEPTION AND MAY NOT BE DISCLOSED TO CERTAIN ENTITIES; BY AMENDING SECTION 59-158-60, RELATING TO DISCLOSURE OF NAME, IMAGE, OR LIKENESS CONTRACTS AND THIRD-PARTY ADMINISTRATORS, SO AS TO DELETE EXISTING LANGUAGE AND PROVIDE FOR THE RESOLUTION OF CONFLICTS BETWEEN CERTAIN PROVISIONS OF THIS ACT AND PROVISIONS IN THE UNIFORM ATHLETE AGENTS ACT OF 2018, AND TO PROVIDE ATHLETE AGENTS SHALL COMPLY WITH CERTAIN FEDERAL REQUIREMENTS; BY AMENDING SECTION 59-102-20, RELATING TO DEFINITIONS IN THE UNIFORM ATHLETE AGENTS ACT OF 2018, SO AS TO REVISE THE DEFINITION OF “ATHLETE AGENT”; BY AMENDING SECTION 59-102-100, RELATING TO AGENCY CONTRACTS, SO AS TO REMOVE A PROVISION CONCERNING COMPENSATION; BY REPEALING SECTION 59-158-70 RELATING TO DISCLOSURES AND LIMITATIONS IN NAME, IMAGE, OR LIKENESS CONTRACTS AND REVOCATION PERIODS FOR SUCH CONTRACTS; AND BY REPEALING SECTION 59-158-80 RELATING TO GOVERNING LAW AND FEDERAL COMPLIANCE CONTRACTS.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 59‑158‑10 of the S.C. Code is amended to read:

Section 59‑158‑10. For the purposes of this chapter:

(1) “Athlete agent” means a person who is registered with the Department of Consumer Affairs pursuant to Section 59‑102‑60 or Section 59‑102‑80. If an athlete agent is an attorney, then he must also be a member in good standing of a state bar association.

(2) “Athletic booster” means a person or entity that has participated in or has been a member of an organization promoting an institution of higher learning's intercollegiate athletics program.

(3)(2) “Compensation” means any remuneration, in cash or in kind, whether provided at the time or at any subsequent date, to a student an intercollegiate athlete. “Compensation” does not mean any grant, scholarship, fellowship, tuition assistance, or other form of financial aid provided to a student for pursuing a post‑secondary education.

(4)(3) “Institution of higher learning” means any post‑secondary educational institution, including a technical or comprehensive educational institution.

(5)(4) “Intercollegiate athlete” means an individual who has graduated from high school that engages in, is eligible to engage in, or may be eligible in the future to engage in an intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, then the individual is not an intercollegiate athlete for the purposes of that sport.

(6)(5) “Intercollegiate sport” means a sport played at the collegiate level for which eligibility requirements for participation by an intercollegiate athlete are established by a national association that promotes or regulates collegiate athletics.

(7)(6) “Name, image, or likeness activities”, “name, image, or likeness contract”, “NIL activities”, or “NIL contract” means an agreement in which an intercollegiate athlete participating in intercollegiate sports authorizes a person to use his name, image, or likeness and, in return, receives consideration. This term shall include, but is not limited to, endorsement contracts.

(8) “Recruit or solicit” means an attempt to influence the choice of an athlete agent by an intercollegiate athlete or, if the intercollegiate athlete is a minor, a parent or guardian of the intercollegiate athlete. “Recruit or solicit” does not mean giving advice on the selection of a particular athlete agent in a family, coaching, or social situation unless the individual giving the advice does so because of the receipt or anticipated receipt of an economic benefit, directly or indirectly, from the athlete agent.

(9) “Team contract” means any agreement between an intercollegiate athlete and an institution of higher learning that could impact the intercollegiate athlete's eligibility to participate in an intercollegiate sport, including, but not limited to, scholarship agreements or participation agreements.

(10)(7) “Third party” means, with respect to an intercollegiate athlete, any entity other than the institution of higher learning in which the intercollegiate athlete is enrolled.

(11) “Third‑party endorsement” means an intercollegiate athlete's public support for, approval of, or recommendation of a product or service, including, but not limited to, social media influencer marketing opportunities; personal appearances; and digital content creation, distribution, and promotion of athletic‑related business activities. “Third‑party endorsement” does not mean the use of an intercollegiate athlete's name, image, or likeness in news reports, commentary, entertainment, or advertisements that is incidental to such uses; the broadcast of a sports contest; the rebroadcast of a sports contest; a brief video or audio clip of a sports contest; or anything that violates a registered or licensed copyright or trademark.

SECTION 2. Section 59‑158‑20 of the S.C. Code is amended to read:

Section 59‑158‑20. (A)(1) An intercollegiate athlete at an institution of higher learning may earn compensation for the use of his name, image, or likeness as provided for in this chapter.

(2) Compensation earned by an intercollegiate athlete for the use of his name, image, or likeness must represent a genuine payment for the use of his name, image, or likeness, independent of, rather than as a payment for, his athletic participation or performance. Compensation may only be provided by a third party.

(3) Compensation may not be provided in exchange for an intercollegiate athlete's athletic performance or attendance at a particular institution of higher learning and may only be provided by a third party unaffiliated with the intercollegiate athlete's institution of higher learning.

(4) A name, image, or likeness contract in conflict with the provisions of this chapter is voidable.

(B) An intercollegiate athlete may receive compensation only for the use of his name, image, or likeness for third‑party endorsements, the intercollegiate athlete's non‑athletic work product, or activities related to a business that the intercollegiate athlete owns.

(C) An institution of higher learning or its athletic conference cannot directly or indirectly create or facilitate compensation opportunities for the use of an intercollegiate athlete's name, image, or likeness.

(D) An institution of higher learning may not use or allow boosters to directly or indirectly create or facilitate compensation opportunities for the use of an intercollegiate athlete's name, image, or likeness as a recruiting inducement or as a means of paying for athletics participation.

(E) An intercollegiate athlete at an institution of higher learning may not use the institution of higher learning's facilities, uniforms provided by the institution of higher learning, or the institution of higher learning's intellectual property, including, but not limited to, the unauthorized use of a registered trademark or product protected by copyright, in connection with the use of the intercollegiate athlete's name, image, or likeness activities.

(F) Activities related to an intercollegiate athlete's use of his name, image, or likeness for compensation are prohibited from taking place during the intercollegiate athlete's participation in academic, athletic, or team‑mandated activities as defined by the institution of higher learning.

(G) Activities related to an intercollegiate athlete's use of his name, image, or likeness for compensation cannot be contingent on a prospective intercollegiate athlete's enrollment at a particular institution of higher learning or its athletic conference and cannot otherwise be used as an inducement by an institution of higher learning or a booster.

(H) An institution of higher learning; an entity with a purpose that includes supporting or benefiting an institution of higher learning or its athletic programs; or an officer, director, or employee of an institution of higher learning or such an entity may not directly or indirectly compensate a current or prospective intercollegiate athlete for the use of the intercollegiate athlete's name, image, or likeness.

(I) A grant in aid, including the cost of attendance, awarded to an intercollegiate athlete by an institution of higher learning is not compensation for the purposes of this chapter and may not be revoked or reduced as a result of an intercollegiate athlete earning compensation or obtaining professional representation under this chapter. Name, image, or likeness compensation shall not be used to limit athletic grant in aid but may be used in the calculation for need‑based financial aid available to the general student population.

(A) An institution of higher learning or any officer, trustee, director, or employee may directly or through an agreement with a third party, identify, create, solicit, facilitate, and otherwise enable opportunities for a currently enrolled intercollegiate athlete to earn compensation for the use of the intercollegiate athlete’s name, image, or likeness. An institution of higher learning may grant permission to intercollegiate athletes to use its trademarks and facilities.

(B) An institution of higher learning may not receive compensation or fees directly from an intercollegiate athlete related to the facilitation of NIL.

(C) No appropriated funds of an institution of higher learning may be used to pay an intercollegiate athlete compensation for the use of their name, image, and likeness.

(D) Compensation earned by an intercollegiate athlete for the use of his name, image or likeness must represent payment for the use of his name, image or likeness, independent of, rather than as payment for, his athletic participation or performance unless otherwise permitted or authorized by a collegiate athletic association and institution of higher learning policy, a court order or a settlement agreement.

SECTION 3. Section 59‑158‑30 of the S.C. Code is amended to read:

Section 59‑158‑30. Earning compensation in compliance with the provisions contained in Section 59‑158‑40 does not affect an intercollegiate athlete's grant in aid or athletic eligibility.A name, image, or likeness contract with an intercollegiate athlete may not extend beyond their eligibility to participate in an intercollegiate athletics program at an institution of higher learning.

SECTION 4. Section 59‑158‑40 of the S.C. Code is amended to read:

Section 59‑158‑40. (A) Notwithstanding athletic conference or collegiate athletic association rules, bylaws, regulations, and policies to the contrary, an institution of higher learning is prohibited from adopting or maintaining a contract, rule, regulation, standard, or other requirement that prevents or unduly restricts an intercollegiate athlete from:

(1) earning compensation for the use of his name, image, or likeness; or

(2) obtaining an athlete agent for the purpose of securing compensation for the use of his name, image, or likeness.

(B)(1)(A) An institution of higher learning may prohibit an intercollegiate athlete from using his name, image, or likeness for compensation if the proposed use of his name, image, or likeness conflicts with:

(a) existing institutional sponsorship agreements or other contracts; or

(b) institutional values as defined by the institution of higher learning.

(2) An intercollegiate athlete may not earn compensation for the use of his name, image, or likeness for the endorsement of tobacco, alcohol, illegal substances or activities, banned athletic substances, or gambling including, but not limited to, sports betting.

(C) An institution of higher learning must disclose known prohibitions for the use of an intercollegiate athlete's name, image, or likeness at the time that an intercollegiate athlete is admitted to the institution of higher learning or when the intercollegiate athlete signs a financial aid agreement or team contract.(B) An institution of higher learning or any officers, trustees, directors, employees, including athletics coaching staff, may not be liable for any damages to an intercollegiate athlete’s ability to earn compensation for the use of the intercollegiate athlete’s name, image, or likeness resulting from decisions or actions routinely taken in the course of intercollegiate athletics. However, nothing in this section should be construed to bar any common law claims by intercollegiate athletes of fraud, fraudulent misrepresentation, or intentional misrepresentation.

(C) An athletic association, an athletic conference, or any other group or organization with authority over an intercollegiate athletic program at an institution of higher learning to which this chapter applies may not:

(1) enforce a contract term, a rule, a regulation, a standard, a bylaw, guidance, or any other requirement that prohibits the institution from participating in intercollegiate sports or otherwise penalizes the institution, the institution’s intercollegiate athletic program, or intercollegiate athletes for performing, participating in, or allowing an activity required or authorized by this chapter; or

(2) prevent an institution of higher learning from establishing agreements with a third‑party entity to act on the institution’s behalf to identify, facilitate, enable, or support an intercollegiate athlete’s name, image, or likeness activities.

SECTION 5. Section 59‑158‑50 of the S.C. Code is amended to read:

Section 59‑158‑50. An intercollegiate athlete participating in name, image, or likeness activities must abide by his institution of higher learning and its athletic department's policies with respect to missed class time and good academic standing. Good academic standing includes meeting both grade point average and course hour requirements. An intercollegiate athlete must also meet all academic requirements of the athletic association and conference that his institution of higher learning is a member of in order to participate in name, image, or likeness activities.

(A) If an institution of higher learning collects, retains, or maintains copies or summaries of the terms of an intercollegiate athlete’s name, image, or likeness contract or proposed contract detailing compensation to the intercollegiate athlete for the use of the intercollegiate athlete’s name, image, or likeness or athletic reputation, the documentation may not be considered a public record under Section 30‑4‑20(C) unless they are a party.

(B) An institution of higher learning may not be compelled to disclose the information to a collegiate athletic association, athletic conference, or other group or organization with authority over an intercollegiate athletic program at an institution of higher learning.

SECTION 6. Section 59‑158‑60 of the S.C. Code is amended to read:

Section 59‑158‑60. (A) A prospective intercollegiate athlete who enters into a name, image, or likeness contract shall disclose the name, image, or likeness contract to his institution of higher learning and its athletic department prior to enrollment or signing a financial aid agreement with the institution of higher learning or a team contract.

(B) A current intercollegiate athlete must disclose the terms of a name, image, or likeness contract prior to signing the name, image, or likeness contract, in a manner designated by the institution of higher learning.

(C) The disclosures required by this section must:

(1) describe the proposed use of the intercollegiate athlete's name, image, or likeness, compensation arrangements, the name of the athlete agent, and a list of all parties to the name, image, or likeness contract; and

(2) be made in the manner designated by the institution of higher learning.

(D) An institution of higher learning may fund, through its athletic department, an independent, third‑party administrator to support education, monitoring, disclosures, and reporting concerning name, image, or likeness activities authorized pursuant to this chapter. A third‑party administrator cannot be a registered athlete agent. An athlete agent is prohibited from having any affiliation with a third‑party administrator.(A) If there is a conflict between the provisions of this chapter and those of Chapter 102, then the provisions of this chapter govern. An athlete agent representing an intercollegiate athlete in a transaction authorized pursuant to this chapter also shall comply with all provisions contained in Chapter 102 that do not conflict with the provisions of this chapter.

(B) An athlete agent shall comply with the federal “Sports Agent Responsibility and Trust Act”, 15 U.S.C. Sections 7801‑7807.

SECTION 7. Section 59‑102‑20(2)(b) of the S.C. Code is amended to read:

(b) does not include an individual who:

(i) acts solely on behalf of a professional sports team or organization; or

(ii) is a licensed, registered, or certified professional and offers or provides services to a student athlete customarily provided by members of the profession, unless the individual:

(A) also recruits or solicits the athlete to enter into an agency contract;

(B) also, for compensation, procures employment or offers, promises, attempts, or negotiates to obtain employment for the athlete as a professional athlete or member of a professional sports team or organization; or

(C) receives consideration for providing the services calculated using a different method than for an individual who is not a student athlete; or

(iii) is an institution of higher learning or an employee or contractor employed by an institution of higher learning.

SECTION 8. Section 59-102-100(H) of the S.C. Code is amended to read:

(H) An agency contract for name, image, or likeness activities, as defined in Chapter 158, Title 59, may not provide for athlete agent compensation that but may not exceeds exceed ten twenty percent of the name, image, or likeness contract.

SECTION 9. Sections 59‑158‑70 and 59‑158‑80 of the S.C. Code are repealed.

SECTION 10. This act takes effect upon approval by the Governor.

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