



Rep. Kambium Buckner

Filed: 5/12/2021

10200SB2338ham001

LRB102 14260 CMG 26479 a

1 AMENDMENT TO SENATE BILL 2338

2 AMENDMENT NO. _____. Amend Senate Bill 2338 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Student-Athlete Endorsement Rights Act.

6 Section 5. Definitions. In this Act:

7 "Compensation" means anything of value, monetary or
8 otherwise, including, but not limited to, cash, gifts, in-kind
9 items of value, social media compensation, payments for
10 licensing or use of publicity rights, payments for other
11 intellectual or intangible property rights under federal or
12 State law, and any other form of payment or remuneration,
13 except as excluded under this Act. "Compensation" shall not
14 include:

15 (1) tuition, room, board, books, fees, and personal
16 expenses that a postsecondary educational institution

1 provides to a student-athlete in accordance with the rules
2 of the athletic association or conference of which the
3 postsecondary educational institution is a member;

4 (2) Federal Pell Grants and other State and federal
5 grants or scholarships unrelated to, and not awarded
6 because of a student-athlete's participation in
7 intercollegiate athletics or sports competition;

8 (3) any other financial aid, benefits, or awards that
9 a postsecondary educational institution provides to a
10 student-athlete in accordance with the rules of the
11 athletic association or conference of which the
12 postsecondary educational institution is a member; or

13 (4) the payment of wages and benefits to a
14 student-athlete for work actually performed (but not for
15 athletic ability or participation in intercollegiate
16 athletics) at a rate commensurate with the prevailing rate
17 for similar work in the locality of the student-athlete's
18 postsecondary educational institution.

19 "Image" means any visual depiction, including, but not
20 limited to, photograph, digital image, rendering, and video.

21 "Intercollegiate athletics program" means an
22 intercollegiate athletics program played at the collegiate
23 level for which eligibility requirements for participation by
24 a student-athlete are established by a national association
25 for the promotion or regulation of collegiate athletics.

26 "Likeness" means a physical, digital, rendering, or other

1 depiction or representation of a student-athlete, including a
2 student-athlete's uniform number or signature, that reasonably
3 identifies the student-athlete with particularity.

4 "Name" means the first or last name or the nickname of a
5 student-athlete when used in a context that reasonably
6 identifies the student-athlete with particularity.

7 "Name, image, and likeness agreement" or "publicity rights
8 agreement" means a contract or other written or oral
9 arrangement between a student-athlete and a third party
10 licensee regarding the use of the name, image, likeness, or
11 voice of the student-athlete.

12 "Publicity right" means any right that (i) is licensed
13 under a publicity rights agreement or (ii) is recognized under
14 a federal or State law that permits an individual to control
15 and benefit from the commercial use of the name, image,
16 likeness, or voice of the individual.

17 "Postsecondary educational institution" means a public
18 university or community college or private university or
19 college.

20 "Social media compensation" means all forms of payment for
21 engagement on social media received by a student-athlete as a
22 result of the use of that student-athlete's name, image,
23 likeness, or voice.

24 "Student-athlete" means a student currently enrolled at a
25 postsecondary educational institution who engages in, is
26 eligible to engage in, or may be eligible in the future to

1 engage in, an intercollegiate athletics program at a
2 postsecondary educational institution. If an individual is
3 permanently ineligible to participate in a particular
4 intercollegiate sport, the individual is not a student-athlete
5 for purposes of that sport.

6 "Third party licensee" means any individual or entity that
7 licenses publicity rights or the use of name, image, likeness,
8 or voice from any prospective or current student-athlete or
9 group of student-athletes. "Third party licensee" shall not
10 include any national association for the promotion or
11 regulation of collegiate athletics, athletics conference, or
12 postsecondary educational institution.

13 Section 10. Compensation. Except as provided in Section
14 15:

15 (1) A student-athlete may earn compensation,
16 commensurate with market value, for the use of the name,
17 image, likeness, or voice of the student-athlete while
18 enrolled at a postsecondary educational institution and
19 obtain and retain a certified agent for any matter or
20 activity relating to such compensation.

21 (2) A student-athlete may not earn compensation in
22 exchange for the student-athlete's athletic ability or
23 participation in intercollegiate athletics or sports
24 competition or agreement or willingness to attend a
25 postsecondary educational institution.

1 (3) Notwithstanding any other provision of law or
2 agreement to the contrary, a student-athlete shall not be
3 deemed an employee, agent, or independent contractor of an
4 association, a conference, or a postsecondary educational
5 institution based on the student-athlete's participation
6 in an intercollegiate athletics program.

7 Section 15. Postsecondary educational institutions;
8 limitations; prohibitions.

9 (a) Except as provided in this Act, a postsecondary
10 educational institution shall not uphold any contract, rule,
11 regulation, standard, or other requirement that prevents a
12 student-athlete of that institution from earning compensation
13 as a result of the use of the student-athlete's name, image,
14 likeness, or voice. Any such contract, rule, regulation,
15 standard, or other requirement shall be void and unenforceable
16 against the postsecondary educational institution or the
17 student-athlete. Compensation from the use of a
18 student-athlete's name, image, likeness, or voice may not
19 affect the student-athlete's scholarship eligibility,
20 grant-in-aid, or other financial aid, awards or benefits, or
21 the student-athlete's intercollegiate athletic eligibility.
22 Nothing in this Act is intended to alter any State or federal
23 laws, rules, or regulations regarding the award of financial
24 aid at postsecondary educational institutions.

25 (b) Except as provided in this Act, an athletic

1 association, conference, or other group or organization with
2 authority over intercollegiate athletic programs, including,
3 but not limited to, the National Collegiate Athletic
4 Association, the National Association of Intercollegiate
5 Athletics, and the National Junior College Athletic
6 Association, shall not prevent, or otherwise enforce a
7 contract, rule, regulation, standard, or other requirement
8 that prevents a student-athlete at a postsecondary educational
9 institution from earning compensation as a result of the use
10 of the student-athlete's name, image, likeness, or voice.

11 (c) To protect the integrity of its educational mission
12 and intercollegiate athletics program, a postsecondary
13 educational institution may impose reasonable limitations on
14 the dates and time that a student-athlete may participate in
15 endorsement, promotional, social media, or other activities
16 related to the license or use of the student-athlete's name,
17 image, likeness, or voice. Nothing in this Act shall restrict
18 a postsecondary educational institution from exercising its
19 sole discretion to control the authorized use of its marks or
20 logos or to determine a student-athlete's apparel, gear, or
21 other wearables during an intercollegiate athletics
22 competition or institution-sponsored event. A student-athlete
23 may not receive or enter into a contract for compensation for
24 the use of the student-athlete's name, image, likeness, or
25 voice in a way that also uses any registered or licensed marks,
26 logos, verbiage, name, or designs of a postsecondary

1 educational institution, unless the postsecondary educational
2 institution has provided the student-athlete with written
3 permission to do so prior to execution of the contract or
4 receipt of compensation. If permission is granted to the
5 student-athlete, the postsecondary educational institution, by
6 an agreement of all of the parties, may be compensated for the
7 use in a manner consistent with market rates. A postsecondary
8 educational institution may also prohibit a student-athlete
9 from wearing any item of clothing, shoes, or other gear or
10 wearables with the name, logo, or insignia of any entity
11 during an intercollegiate athletics competition or
12 institution-sponsored event.

13 (d) An athletic association, conference, or other group or
14 organization with authority over intercollegiate athletics
15 programs, including, but not limited to, the National
16 Collegiate Athletic Association, the National Association of
17 Intercollegiate Athletics, and the National Junior College
18 Athletic Association, shall not enforce a contract, rule,
19 regulation, standard, or other requirement that prevents a
20 postsecondary educational institution from participating in an
21 intercollegiate athletics program as a result of the
22 compensation of a student-athlete for the use of the
23 student-athlete's name, image, likeness, or voice.

24 (e) A postsecondary educational institution, athletic
25 association, conference, or other group or organization with
26 authority over intercollegiate athletics programs, including,

1 but not limited to, the National Collegiate Athletic
2 Association, the National Association of Intercollegiate
3 Athletics, and the National Junior College Athletic
4 Association, shall not directly or indirectly:

5 (1) enter into, or offer to enter into, a publicity
6 rights agreement with a prospective or current
7 student-athlete; or

8 (2) provide a prospective or current student-athlete
9 or the student-athlete's family compensation in relation
10 to the use of the student-athlete's name, image, likeness,
11 or voice.

12 (f) A postsecondary educational institution, athletic
13 association, conference, or other group or organization with
14 authority over intercollegiate athletics programs, including,
15 but not limited to, the National Collegiate Athletic
16 Association, the National Association of Intercollegiate
17 Athletics, and the National Junior College Athletic
18 Association, shall not prevent a student-athlete from
19 obtaining professional representation for purposes of this Act
20 in relation to name, image, likeness, or voice, or to secure a
21 publicity rights agreement, including, but not limited to,
22 representation provided by athlete agents or legal
23 representation provided by attorneys. A student-athlete shall
24 provide the postsecondary educational institution with written
25 notice and a copy of the agreement within 7 days of entering
26 into a representation agreement with any individual for the

1 purpose of exploring or securing compensation for use of the
2 student-athlete's name, image, likeness, or voice.

3 Section 20. Agents; publicity rights; third party
4 licensees.

5 (a) An agent, legal representative, or other professional
6 service provider offering services to a student-athlete shall,
7 to the extent required, comply with the federal Sports Agent
8 Responsibility and Trust Act and any other applicable laws,
9 rules, or regulations.

10 (b) A grant-in-aid, including cost of attendance, and
11 other permissible financial aid, awards, or benefits from the
12 postsecondary educational institution in which a
13 student-athlete is enrolled shall not be revoked, reduced, nor
14 the terms and conditions altered, as a result of a
15 student-athlete earning compensation or obtaining professional
16 or legal representation pursuant to this Act.

17 (c) A student-athlete shall disclose to the postsecondary
18 educational institution in which the student is enrolled, in a
19 manner and time prescribed by the institution, the existence
20 and substance of all publicity rights agreements. Publicity
21 rights agreements that contemplate cash or other compensation
22 to the student-athlete that is equal to or in excess of a value
23 of \$500 shall be formalized in a written contract, and the
24 contract shall be provided to the postsecondary educational
25 institution in which the student is enrolled prior to the

1 execution of the agreement and before any compensation is
2 provided to the student-athlete.

3 (d) A student-athlete may not enter into a publicity
4 rights agreement or otherwise receive compensation for that
5 student-athlete's name, image, likeness, or voice for services
6 rendered or performed while that student-athlete is
7 participating in activities sanctioned by that
8 student-athlete's postsecondary educational institution if
9 such services or performance by the student-athlete would
10 conflict with a provision in a contract, rule, regulation,
11 standard, or other requirement of the postsecondary
12 educational institution.

13 (e) No booster, third-party licensee, or any other
14 individual or entity, shall provide or directly or indirectly
15 arrange for a third-party to provide compensation to a
16 prospective or current student-athlete or enter into, or
17 directly or indirectly arrange for a third-party to enter
18 into, a publicity rights agreement as an inducement for the
19 student-athlete to attend or enroll in a specific institution
20 or group of institutions. Compensation for a student-athlete's
21 name, image, likeness, or voice shall not be conditioned on
22 athletic performance or attendance at a particular
23 postsecondary educational institution.

24 (f) A postsecondary educational institution may fund an
25 independent, third-party administrator to support education,
26 monitoring, disclosures, and reporting concerning name, image,

1 likeness, or voice activities by student-athletes authorized
2 pursuant to this Act. A third-party administrator cannot be a
3 registered athlete agent.

4 (g) No postsecondary educational institution shall provide
5 or directly or indirectly arrange for a third-party to provide
6 compensation to a prospective or current student-athlete or
7 enter into, or directly or indirectly arrange for a third
8 party to enter into, a publicity rights agreement with a
9 prospective or current student-athlete.

10 (h) No student-athlete shall enter into a publicity rights
11 agreement or receive compensation from a third party licensee
12 relating to the name, image, likeness, or voice of the
13 student-athlete before the date on which the student-athlete
14 enrolls at a postsecondary educational institution.

15 (i) No student-athlete shall enter into a publicity rights
16 agreement or receive compensation from a third party licensee
17 for the endorsement or promotion of gambling, sports betting,
18 controlled substances, cannabis, a tobacco or alcohol company,
19 brand, or products, alternative or electronic nicotine product
20 or delivery system, performance-enhancing supplements, adult
21 entertainment, or any other product or service that is
22 reasonably considered to be inconsistent with the values or
23 mission of a postsecondary educational institution or that
24 negatively impacts or reflects adversely on a postsecondary
25 education institution or its athletic programs, including, but
26 not limited to, bringing about public disrepute,

1 embarrassment, scandal, ridicule, or otherwise negatively
2 impacting the reputation or the moral or ethical standards of
3 the postsecondary educational institution.

4 Section 25. Term of student-athlete contract. A contract
5 for the use of the student-athlete's name, image, likeness, or
6 voice that is entered into while the student-athlete is
7 participating in an intercollegiate sport at a postsecondary
8 educational institution may not extend beyond the
9 student-athlete's participation in the sport at the
10 institution.

11 Section 30. Construction. Nothing in this Act shall be
12 construed to modify any requirements or obligations imposed
13 under Title IX of the Education Amendments of 1972.

14 Section 35. Liability. No postsecondary educational
15 institution shall be subject to a claim for damages of any kind
16 under this Act, including, but not limited to, a claim for
17 unfair trade or competition or tortious interference. No
18 postsecondary educational institution shall be subject to a
19 claim for damages related to its adoption, implementation, or
20 enforcement of any contract, rule, regulation, standard, or
21 other requirement in compliance with this Act. This Act is not
22 intended to and shall not waive or diminish any applicable
23 defenses and immunities, including, but not limited to,

1 sovereign immunity applicable to postsecondary educational
2 institutions.

3 Section 99. Effective date. This Act takes effect upon
4 becoming law or on July 1, 2021, whichever is later."