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SENATE BILL NO. 678

Offered January 17, 2024

A BILL to amend and reenact § 23.1-408.1 of the Code of Virginia, relating to intercollegiate athletics, student-athletes; compensation and representation for name, image, or likeness.

Patrons—Rouse and Pillion

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That § 23.1-408.1 of the Code of Virginia is amended and reenacted as follows:

§ 23.1-408.1. Intercollegiate athletics; student-athletes; compensation and representation for name, image, or likeness.

A. As used in this section:

"Athlete agent" means an individual who holds a valid certificate of registration as an athlete agent issued pursuant to Chapter 5.2 (§ 54.1-526 et seq.) of Title 54.1.

"Attorney" means an attorney licensed to practice law in the Commonwealth.

"Compensation" means any type of remuneration or anything of value. "Compensation" does not include any (i) scholarship provided to a student-athlete that covers some or all of the cost of attendance at an institution at which the student-athlete is enrolled or (ii) benefit a student-athlete may receive in accordance with the rules of the relevant athletic association or conference.

"Institution" means a private institution of higher education, associate-degree-granting public institution of higher education, or baccalaureate public institution of higher education.

"Student-athlete" means an individual enrolled at an institution who participates in intercollegiate athletics.

B. No institution or agent thereof, athletic association, athletic conference, or other organization with authority over intercollegiate athletics shall:

1. Prohibit or prevent a student-athlete from earning compensation for the use of his name, image, or likeness, except as otherwise permitted in this section;

2. Prohibit or prevent a student-athlete from obtaining professional representation by an athlete agent or legal representation by an attorney in connection with issues related to name, image, or likeness;

3. Declare a student-athlete ineligible for intercollegiate athletic competition because he earns compensation for the use of his name, image, or likeness or obtains professional representation by an athlete agent or attorney in connection with issues related to name, image, or likeness; or

4. Reduce, cancel, revoke, or not renew an athletic scholarship because a student-athlete earns compensation for the use of his name, image, or likeness or obtains professional representation by an athlete agent or attorney in connection with issues related to name, image, or likeness.

C. No athletic association, athletic conference, or other organization with authority over intercollegiate athletics shall entertain a complaint, open an investigation, or take any other adverse action against an institution, its supporting foundations, or an entity acting on its behalf, for activity permitted under § 23.1-408.1.

D. No athletic association, athletic conference, or other organization with authority over intercollegiate athletics shall penalize an institution or a student-athlete, or prevent an institution or student-athlete from participating in intercollegiate athletics, because an individual or entity whose purpose includes supporting or benefitting the institution, or student-athletes, violates its rules or regulations concerning name, image and likeness. Institutions are permitted to enforce their institutional policies and procedures and the provisions of § 23.1-408.1.

E. No athletic association, athletic conference, or other organization with authority over intercollegiate athletics shall prevent an institution from having the ability to compensate a student athlete for the use of their name, image, or likeness. Institutions shall develop policies or procedures that govern student-athletes being compensated for name, image and likeness that are approved by the Board of Visitors, Board of Trustee, or a similar governing entity. Information concerning compensation for the use of a student-athlete's name, image, or likeness shall be exempt from § 2.2-3700, et seq.

F. No athletic association, athletic conference, or other organization with authority over intercollegiate athletics shall prevent an institution, its supporting foundations, or an entity acting on its behalf, to identify, create, negotiate, facilitate, support, engage with, assist with, or otherwise enable a name, image or likeness opportunity for a student-athlete.

G. An institution may provide assets, resources or benefits as an incentive to individuals, companies or other entities for providing money, benefits, opportunities or services to an outside entity that supports name,

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59 *image and likeness opportunities for the institution's student-athletes.*

60 **CH.** No athletic association, athletic conference, or other organization with authority over intercollegiate  
61 athletics shall prohibit or prevent an institution from becoming a member of the association, conference, or  
62 organization or participating in intercollegiate athletics sponsored by such association, conference, or  
63 organization as a consequence of any student-athlete earning compensation for the use of his name, image, or  
64 likeness or obtaining representation by an athlete agent or attorney in connection with issues related to name,  
65 image, or likeness.

66 **DI.** No student-athlete shall earn compensation for the use of his name, image, or likeness in connection  
67 with any of the following:

- 68 1. Alcohol and alcoholic beverages;
- 69 2. Adult entertainment;
- 70 3. Cannabis, cannabinoids, cannabidiol, or other derivatives, not including hemp or hemp products;
- 71 4. Controlled substances, as defined in § 54.1-3401;
- 72 5. Performance enhancing drugs or substances such as steroids or human growth hormone;
- 73 6. Drug paraphernalia, as defined in § 18.2-265.1;
- 74 7. Tobacco, tobacco products, alternative nicotine products, nicotine vapor products, and similar products  
75 and devices;
- 76 8. Weapons, including firearms and ammunition for firearms; and
- 77 9. Casinos or gambling, including sports betting.

78 **EJ.** An institution may prohibit a student-athlete from earning compensation for the use of his name,  
79 image, or likeness while the student-athlete is engaged in academic, official team, or athletic department  
80 activities, including class, tutoring, competition, practice, travel, academic services, community service,  
81 promotional activities, and other athletic department activities.

82 **FK.** No student-athlete shall use an institution's facilities; apparel; equipment; uniforms; or intellectual  
83 property, including logos, indicia, registered and unregistered trademarks, and products protected by  
84 copyright, for any opportunity to earn compensation for the use of his name, image, or likeness, unless  
85 otherwise permitted by the institution.

86 **GL.** Prior to executing an agreement concerning the use of his name, image, or likeness, a student-athlete  
87 shall disclose such agreement to the institution at which he is enrolled in a manner designated by the  
88 institution. *Information disclosed is confidential and exempt from § 2.2-3700, et seq.* If a student-athlete  
89 discloses a potential agreement that conflicts with an existing institutional agreement, the institution shall  
90 disclose the relevant terms of the conflicting agreement to the student-athlete.

91 **HM.** An institution may prohibit a student-athlete from using his name, image, or likeness to earn  
92 compensation if the proposed use conflicts with an existing institutional agreement *or any written policy of*  
93 *the institution.*

94 **IN.** No institution shall, except as otherwise permitted in this section, enter into, renew, or modify any  
95 agreement that prohibits a student-athlete from using his name, image, or likeness to earn compensation while  
96 the student-athlete is engaged in non-academic, unofficial team, or non-athletic department activities.

97 **JO.** Nothing in this section shall be construed to impact the employment status of a student-athlete, *nor*  
98 *qualify a student-athlete as an employee of an institution solely because the student-athlete engages in name,*  
99 *image, or likeness opportunities. No student-athlete shall be considered an employee of an institution based*  
100 *on participation in intercollegiate athletics.*

101 **KP.** Any student-athlete who is aggrieved by any action of an institution or agent thereof, athletic  
102 association, athletic conference, or other organization with authority over intercollegiate athletics in violation  
103 of any provision of this section may bring an action for injunctive relief.

104 **Q.** *An institution, its employees, supporting foundations, or an entity acting on its behalf, shall not be*  
105 *liable for any damages related to a student-athlete's ability or inability to earn compensation for the use of*  
106 *the student-athlete's name, image, or likeness.*

107 **R.** *An institution, its supporting foundations, or an entity acting on its behalf, that is subjected to any*  
108 *actual or threatened complaint, investigation, penalty or other adverse action of an athletic association,*  
109 *athletic conference, or other organization with authority over intercollegiate athletics for engaging in*  
110 *activities permitted under § 23.1-408.1, may bring an action to recover actual damages and reasonable*  
111 *attorney's fees and may seek injunctive relief and any other remedy available at law or in equity.*