

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 80

AN ACT

To repeal section 173.280, RSMo, and to enact in lieu thereof two new sections relating to compensation of student athletes.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 173.280, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 167.750 and 173.280, to read as follows:

167.750. 1. As used in this section, the following terms mean:

(1) "High school athlete", an individual who is eligible to participate in, participates in, or has participated in an interscholastic sport on an interscholastic athletic team in this state that is sponsored by a public school or by a private school whose students compete against a public school's students;

(2) "Private school", the same definition as in section 166.700;

(3) "Public school", the same definition as in section 160.011.

2. A high school athlete may earn or attempt to earn compensation from the use of such athlete's name, image, likeness rights, or athletic reputation as provided in this section and section 173.280, subject to the following:

(1) A high school athlete shall have the right to discuss earning or attempting to earn such compensation before signing an athletic letter of intent or other written agreement only when having discussions about potential

enrollment with a postsecondary educational institution in this state; and

(2) A high school athlete shall have the right to earn or attempt to earn such compensation only after signing an athletic letter of intent or other written agreement to enroll in a postsecondary educational institution in this state.

3. The discussion of, or earning or attempting to earn, compensation from the use of such high school athlete's name, image, likeness rights, or athletic reputation as provided in this section and section 173.280 shall not be construed to be a violation of any rules or regulations a high school student or a high school is required to follow to maintain and protect a high school athlete's high school eligibility to participate in high school athletics in this state.

173.280. 1. As used in this section, the following terms mean:

(1) "Institutional marketing associate", any third-party entity that enters into an agreement with a postsecondary educational institution or its intercollegiate athletics or sports program to market and/or promote the postsecondary educational institution or its intercollegiate athletics or sports program, or to otherwise act on behalf of the postsecondary educational institution or the postsecondary educational institution's intercollegiate athletics or sports program. This term does not include a regulatory body, postsecondary educational institution, postsecondary educational institution staff member, or their respective officers, directors, managers, owners, or employees;

(2) "Postsecondary educational institution", any campus of a public or private institution of higher

education in this state that is subject to the coordinating board for higher education under section 173.005;

(3) "Student athlete", an individual who is eligible to participate in, participates in, or has participated in an intercollegiate sport for a postsecondary educational institution. Student athlete shall not be construed to apply to an individual's participation in a college intramural sport or in a professional sport outside of intercollegiate athletics;

(4) "Third party", any individual or entity, including any athlete agent, other than a postsecondary educational institution, athletic conference, or athletic association.

2. (1) No postsecondary educational institution shall uphold any rule, requirement, standard, or other limitation of an athletic association or athletic conference that prevents a student of that institution from fully participating in intercollegiate athletics without penalty and earning compensation as a result of the use of the student's name, image, likeness rights, or athletic reputation. A student athlete earning compensation from the use of a student's name, image, likeness rights, or athletic reputation shall not affect such student athlete's grant-in-aid or stipend eligibility, amount, duration, or renewal.

(2) No postsecondary educational institution shall interfere with or prevent a student from fully participating in intercollegiate athletics or obtaining professional representation in relation to contracts or legal matters relating to earning compensation as a result of the use of the student athlete's name, image, likeness rights, or athletic reputation, including, but not limited to, representation provided by athlete agents, financial advisors, or legal representation provided by attorneys.

3. A grant-in-aid or stipend from the postsecondary educational institution in which a student is enrolled shall not be construed to be compensation for use of the student's name, image, likeness rights, or athletic reputation for purposes of this section, and no grant-in-aid or stipend shall be revoked or reduced as a result of a student earning compensation under this section.

4. (1) No student athlete shall enter into an apparel, equipment, or beverage contract providing compensation to the athlete for use of the athlete's name, image, likeness rights, or athletic reputation if the contract requires the athlete to display a sponsor's apparel, equipment, or beverage or otherwise advertise for the sponsor during official team activities if such provisions are in conflict with a provision of the postsecondary educational institution's current licenses or contracts.

(2) (a) Except with the prior written consent of the student athlete's postsecondary educational institution, a student athlete shall not enter into a contract for compensation for the use of such student athlete's name, image, likeness rights, or athletic reputation, if such institution determines that a term of the contract conflicts with a term of a contract to which such institution is a party.

(b) A postsecondary educational institution or any officer, director, or employee of such institution, including but not limited to a coach, member of the coaching staff, or any individual associated with the institution's athletic department, shall have the right to identify, create, facilitate, negotiate, support, enable, or otherwise assist with opportunities for a student athlete to earn compensation from a third party, including an institutional

marketing associate, for the use of the student athlete's name, image, likeness rights, or athletic reputation, provided that such individual shall not:

a. Receive compensation from the student athlete or a third party for facilitating, enabling, or assisting with such opportunities;

b. Attempt to influence an athlete's choice of professional representation related to such opportunities; or

c. Attempt to reduce such athlete's opportunities from competing third parties.

(c) The provisions of this section shall not be construed to qualify a student athlete as an employee of a postsecondary educational institution.

(3) Before any contract for compensation for the use of a student athlete's name, image, likeness rights, or athletic reputation, or for professional representation, is executed, and before any compensation is provided to the student athlete in advance of a contract, the student athlete shall disclose that contract to his or her postsecondary educational institution in a manner prescribed by such institution.

(4) A postsecondary educational institution or any officer, director, or employee of such institution shall not compensate a student athlete, prospective student athlete, or the family of such individuals, for the use of such student athlete or prospective student athlete's name, image, likeness rights, or athletic reputation, unless otherwise permitted by institutional policy and a collegiate athletics association that the postsecondary educational institution is a member of.

(5) (a) As used in this subdivision, "unique identifier" means any of the following developed or adopted

for marketing or promotional purposes by a postsecondary educational institution or a third party:

- a. Seal;
- b. Logo;
- c. Emblem;
- d. Motto;
- e. Special symbol;
- f. Institutional colors;
- g. Modifier or descriptor;
- h. Design;
- i. Patentable or copyrightable item, material, or information; or
- j. Other item, material, or information that identifies and is recognizable as unique to such postsecondary educational institution or third party.

(b) A postsecondary educational institution or a third party shall develop and adopt a process for granting to a student athlete, or to a third party for use with a student athlete, a license to use such institution's or third-party's unique identifiers when earning or attempting to earn compensation from the use of such student athlete's name, image, likeness rights, or athletic reputation consistent with its policies regarding licensing of its unique identifiers.

(c) A postsecondary educational institution or a third party may charge a reasonable fee for a license to use a unique identifier under this subdivision.

(d) A postsecondary educational institution, or a third party, may impose requirements that a student athlete granted a license under this subdivision refrain from using such unique identifier in a manner that the institution in its sole discretion determines:

- a. Is reasonably considered to be inconsistent with such institution's or third-party's values or mission;
- b. Adversely affects such institution's or third-party's image;
- c. Negatively impacts or inappropriately reflects upon the reputation or religious, moral, or ethical standards of such institution or third party;
- d. Violates such institution's or third-party's code of conduct or similar requirements; or
- e. Conflicts with a provision of such institution's or third-party's current licenses or contracts.

5. No contract of a postsecondary educational institution's athletic program shall prevent a student athlete from receiving compensation for using the student athlete's name, image, likeness rights, or athletic reputation for a commercial purpose when the athlete is not engaged in official mandatory team activities that are recorded in writing and can be made publicly available upon request.

6. (1) If a private postsecondary educational institution collects, retains, or maintains the terms of a student athlete's contract or proposed contract detailing compensation to such student athlete for the use of such student athlete's name, image, likeness, or athletic reputation, such postsecondary educational institution shall consider such contract terms to be student-governed by the Family Education Rights and Privacy Act (FERPA).

(2) The terms of a contract or proposed contract detailing compensation to a student athlete for the use of such student athlete's name, image, likeness, or athletic reputation shall be deemed a closed record under chapter 610. A public postsecondary educational institution subject to this subsection may withhold or refuse to release or

otherwise disclose such contract terms without seeking a formal opinion of the attorney general of this state as authorized in section 610.027.

7. (1) No compensation to a student athlete for earning or attempting to earn compensation from the use of such student athlete's name, image, likeness rights, or athletic reputation shall be conditioned on such student athlete's athletic performance. Those providing compensation to a student athlete for the use of his or her name, image, likeness rights, or athletic reputation shall have the right to condition payment of that compensation on a student athlete's attendance at a particular postsecondary educational institution.

(2) A charitable organization that qualifies as an exempt organization under 26 U.S.C. Section 501(c)(3), as amended, shall have the right to compensate a student athlete for the commercial use of the student athlete's name, image, likeness rights, or athletic reputation.

(3) Notwithstanding any rule of an athletic association, athletic conference, or any other organization with authority over varsity intercollegiate athletics, institutional marketing associates shall have the right to compensate a student athlete for the commercial use of the student athlete's name, image, likeness rights, or athletic reputation. This includes the right to compensate a student athlete for the commercial use of the student athlete's name, image, or likeness rights in connection with the promotion of athletic events in which the student athlete will or may participate, the promotion of the postsecondary educational institution the student athlete attends, and the promotion of the postsecondary educational institution's intercollegiate athletics or sports program. Further, an institutional marketing associate shall, in the event that a

postsecondary educational institution or its intercollegiate athletics program affirmatively grants a request, have the right to utilize a postsecondary educational institution's, or the postsecondary educational institution's intercollegiate athletics program's, content creation and marketing capabilities in connection with services provided for the promotion of athletic events in which a student athlete will or may participate, the postsecondary educational institution, or the institution's intercollegiate athletics or sports program.

(4) Notwithstanding any rule of an athletic association, athletic conference, or any other organization with authority over varsity intercollegiate athletics, student athletes shall have the right to receive compensation from an institutional marketing associate for the commercial use of their name, image, likeness rights, or athletic reputation, in connection with, among other items, the promotion of athletic events in which the student athlete will or may participate, the promotion of the postsecondary educational institution the student athlete attends, and the promotion of the postsecondary educational institution's intercollegiate athletics or sports program.

8. (1) Postsecondary educational institutions that enter into commercial agreements that directly or indirectly require the use of a student athlete's name, image, likeness, or athletic reputation shall offer at least two workshops per calendar year that may include topics such as financial literacy, life skills, time management, and entrepreneurship. The workshops may not be offered in the same month and each workshop offered in a calendar year must be unique and not simply a repeat of the other workshop offered that year. The institution shall notify all student athletes of the sessions through the distribution of

informational materials via email or other communication methods the institution regularly uses to communicate with student athletes.

(2) The educational workshops shall not include any marketing, advertising, referral, or solicitation by providers of financial products or services.

9. An athletic association, athletic conference, or any other organization with authority over varsity intercollegiate athletics shall not, and shall not authorize its member institutions to:

(1) Prevent a student athlete from receiving compensation for the commercial use of the student athlete's name, image, likeness rights, or athletic reputation under this section;

(2) Penalize a student athlete for receiving compensation for the commercial use of the student athlete's name, image, likeness rights, or athletic reputation under this section;

(3) Prevent a postsecondary educational institution from participating in varsity intercollegiate athletics or otherwise penalize a postsecondary educational institution as a result of a student athlete's receipt of compensation for the student athlete's name, image, likeness rights, or athletic reputation under this section;

(4) Prevent a postsecondary educational institution from establishing agreements with a third-party entity to act on its behalf to identify, facilitate, enable, or support student athlete name, image, and likeness activities;

(5) Entertain a complaint, open an investigation, or take any other adverse action against a postsecondary educational institution or any of its employees for engaging in any activity protected under this section;

(6) Penalize a postsecondary educational institution because an institutional marketing associate compensates a student athlete for use of his or her name, image, likeness rights, or athletic reputation, as protected under this section, or if a third party violates the collegiate athletic association's rules or regulations with regard to student athlete name, image, or likeness activities.

10. A student athlete shall have the right to obtain professional representation for the purpose of securing compensation for the use of his or her name, image, or likeness without penalty or resulting limitation on participating or effect on the student athlete's athletic grant-in-aid eligibility. Professional representation shall be by attorneys or agents licensed by this state. Any professional representation agreement shall be in writing, be executed by both parties, clearly describe the obligations of the parties, and outline fees for the professional representation.

11. (1) Any student athlete may bring a civil action against third parties that violate this section or that interfere with such student athlete's earning or attempting to earn compensation from the use of such student athlete's name, image, likeness rights, or athletic reputation for appropriate injunctive relief or actual damages, or both. Such action shall be brought in the county where the violation occurred, or is about to occur, and the court shall award damages and court costs to a prevailing plaintiff.

(2) Student athletes bringing an action under this section shall not be deprived of any protections provided under law with respect to a controversy that arises and shall have the right to adjudicate claims that arise under this section.

12. No legal settlement shall conflict with the provisions of this section.

13. This section shall apply only to agreements or contracts entered into, modified, or renewed on or after August 28, 2021. Such agreements or contracts include, but are not limited to, the national letter of intent, an athlete's financial aid agreement, commercial contracts in the athlete group licensing market, and athletic conference or athletic association rules or bylaws.

14. No postsecondary educational institution's employees, including athletics coaching staff, shall be liable for any damages to a student athlete's ability to earn compensation for the use of the student athlete's name, image, or likeness resulting from decisions or actions routinely taken in the course of intercollegiate athletics.

15. This section does not affect the rights of student athletes under Title IX of the Education Amendments of 1971 (20 U.S.C. Section 1681 et seq.).

[16. (1) A high school athlete who competes on an interscholastic athletic team in this state that is sponsored by a public school or by a private school whose students compete against a public school's students may earn or attempt to earn compensation from the use of such athlete's name, image, likeness rights, or athletic reputation as provided in this section, subject to the following:

(a) A high school athlete shall have the right to discuss earning or attempting to earn such compensation before signing an athletic letter of intent or other written agreement only when having discussions about potential enrollment with a postsecondary educational institution in this state; and

(b) A high school athlete shall have the right to earn or attempt to earn such compensation only after signing an athletic letter of intent or other written agreement to enroll in a postsecondary educational institution in this state.

(2) The discussion of, or earning or attempting to earn, compensation from the use of such high school athlete's name, image, likeness rights, or athletic reputation as provided in this section shall not be construed to be a violation of any rules and regulations a high school student and high schools are required to follow to maintain and protect a high school athlete's high school eligibility to participate in high school athletics in this state.]