

OKLAHOMA STATE SENATE
CONFERENCE
COMMITTEE REPORT

April 13, 2023

Mr. President:

Mr. Speaker:

The Conference Committee, to which was referred

SB 840

By: McCortney and Jett of the Senate and Echols and Deck of the House


Title: Collegiate athletics; modifying provisions in the Student Athlete Name, Image and Likeness Rights Act. Emergency.

together with Engrossed House Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the House recede from all Amendments.
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,

SENATE CONFEREES:


McCortney


Pugh


Paxton


Murdock


Boren

HOUSE CONFEREES:

Conference Committee on Rules

Senate Action _____ Date _____ House Action _____ Date _____

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED

SENATE BILL NO. 840

By: McCortney and Jett of the
Senate

and

Echols and Deck of the
House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to collegiate athletics; amending 70 O.S. 2021, Sections 820.22, 820.23, 820.24, 820.25, and 820.26, which relate to the Student Athlete Name, Image and Likeness Rights Act; modifying definitions; modifying limitation on certain compensation; prohibiting postsecondary institution from providing certain representation or compensation; prohibiting collegiate athletic association from imposing certain restrictions on postsecondary institutions; construing provisions; removing limitation on certain representation; establishing requirements for certain agreements; requiring certain individual or entity to ensure certain disclosures; requiring disclosure of certain representation; modifying requirements for certain contracts; prohibiting use of certain marks for certain purposes; providing exception; authorizing adoption of certain restrictions; authorizing certain third-party agreements; authorizing certain educational or training requirements; modifying effective date of provisions; prohibiting collegiate athletic association and member institutions from taking certain actions against student athlete or postsecondary institutions; prohibiting liability for employees of postsecondary institution for certain decisions or actions; updating statutory language; amending 70 O.S. 2021, Section 822.1, which relates to gifts to student athletes; updating statutory references;

1 modifying definition; providing for codification; and
2 declaring an emergency.

3
4 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

5 SECTION 1. AMENDATORY 70 O.S. 2021, Section 820.22, is
6 amended to read as follows:

7 Section 820.22. As used in the Student Athlete Name, Image and
8 Likeness Rights Act:

9 1. "Athletic grant-in-aid" shall have the meaning provided by
10 the applicable collegiate athletic association as aid related to the
11 student athlete's participation in an intercollegiate sport for a
12 postsecondary institution. ~~"Athletic grant-in-aid"~~ Athletic grant-
13 in-aid shall not include compensation for the use of the student-
14 athlete's name, image, or likeness rights or athletic reputation;

15 2. "Collegiate athletic association" means any athletic
16 association, conference, or other group or organization with
17 authority over intercollegiate sports including, but not limited to,
18 the National Collegiate Athletic Association;

19 3. "Postsecondary institution" means any state educational
20 institution or private educational institution as defined in Section
21 3102 of Title 70 of the Oklahoma Statutes;

22 4. "Professional representation" includes, but is not limited
23 to, representation ~~provided by an athlete agent holding a~~
24 ~~certificate of registration under the Revised Uniform Athlete Agents~~

1 ~~Act or an attorney duly admitted to practice law in this state by~~
2 ~~any individual or entity engaged by a student athlete for the~~
3 ~~purpose of securing compensation or benefits for a student athlete's~~
4 ~~name, image, or likeness activities. Any individual or entity~~
5 ~~engaged for such purpose shall be a fiduciary for the represented~~
6 ~~student athlete;~~

7 5. ~~"Sponsor" means an individual or organization that receives~~
8 ~~institutional recognition for its financial support or other~~
9 ~~contributions in support of a postsecondary institution or its~~
10 ~~departments or programs;~~

11 ~~6.~~ "Student athlete" shall have the same meaning as defined in
12 the Revised Uniform Athlete Agents Act; and

13 ~~7. "Team contract" means a contract between a postsecondary~~
14 ~~institution or a postsecondary institution's athletic department and~~
15 ~~a sponsor or a third party authorized to enter into a sponsorship~~
16 ~~agreement or agreements on behalf of a postsecondary institution~~

17 6. "Team activities" means student athlete participation in
18 countable athletically related activities and required athletic
19 activities as defined by the collegiate athletic association or as
20 otherwise defined by the postsecondary institution.

21 SECTION 2. AMENDATORY 70 O.S. 2021, Section 820.23, is
22 amended to read as follows:

23 Section 820.23. A. Except as otherwise provided in the Student
24 Athlete Name, Image and Likeness Rights Act, a student athlete may

1 earn compensation ~~commensurate with market value~~ for the use of the
2 name, image, or likeness of the student athlete while enrolled at a
3 postsecondary institution without penalty or resulting limitation on
4 participation. Compensation for the use of a student athlete's
5 name, image, or likeness shall not affect the student athlete's
6 eligibility for athletic grant-in-aid.

7 B. A student athlete shall not earn compensation in exchange
8 for his or her athletic performance or participation in
9 intercollegiate athletics or sports competition. Compensation shall
10 not be provided as an inducement for athletic performance or to
11 attend or enroll at a particular institution.

12 C. A postsecondary institution, ~~an entity whose purpose~~
13 ~~includes supporting or benefitting the postsecondary institution or~~
14 ~~its athletic programs~~ or an officer, director, or employee of such
15 postsecondary institution ~~or entity~~ shall not provide professional
16 representation, or compensate or cause compensation to be directed
17 to a current or prospective student athlete for his or her name,
18 image, or likeness. ~~A scholarship from a postsecondary institution~~
19 ~~in which a student athlete is enrolled that provides him or her with~~
20 ~~the cost of attendance, as defined by an applicable collegiate~~
21 ~~athletic association, at the institution shall not be considered~~
22 ~~compensation for purposes of this Act~~ unless otherwise permitted by
23 a collegiate athletics association and institutional policy.

1 D. A collegiate athletic association shall not, ~~and shall not~~
2 ~~authorize its member institutions to:~~

3 ~~1. Prevent a student athlete at a postsecondary institution~~
4 ~~from earning compensation from the use of his or her name, image or~~
5 ~~likeness;~~

6 ~~2. Prevent a postsecondary institution from participation in~~
7 ~~intercollegiate athletics because a student athlete in attendance~~
8 ~~has previously earned or intends to earn compensation for the use of~~
9 ~~his or her name, image or likeness;~~

10 ~~3. Provide a prospective student athlete with compensation in~~
11 ~~relation to the use of his or her name, image or likeness;~~

12 ~~4. Penalize a student athlete or prevent a student athlete from~~
13 ~~full participation in an intercollegiate sport because he or she~~
14 ~~obtains professional representation in relation to a contract or~~
15 ~~other legal matter; or~~

16 ~~5. Allow compensation earned by a student athlete for the use~~
17 ~~of his or her name, image or likeness or athletic reputation to~~
18 ~~affect the amount, duration or renewal of or eligibility for any~~
19 ~~athletic grant-in-aid or other institutional scholarship; provided,~~
20 ~~however, compensation earned by a student athlete for the use of his~~
21 ~~or her name, image or likeness or athletic reputation may be used~~
22 ~~for the calculation of income for determining eligibility for need-~~
23 ~~based financial aid~~ prohibit a postsecondary institution from
24 identifying, facilitating, enabling, or supporting opportunities for

1 a student athlete to earn compensation for the student athlete's
2 name, image, or likeness activities.

3 E. The provisions of this section shall not be construed to
4 qualify a student athlete as an employee of a postsecondary
5 institution.

6 SECTION 3. AMENDATORY 70 O.S. 2021, Section 820.24, is
7 amended to read as follows:

8 Section 820.24. A. 1. A student athlete may obtain
9 professional representation ~~by an athlete agent or attorney~~ for the
10 purpose of securing compensation for the use of his or her name,
11 image, or likeness without penalty, resulting limitation on
12 participation or effect on the student-athlete's athletic grant-in-
13 aid eligibility.

14 2. Any professional representation agreement shall:

15 a. be in writing,

16 b. be executed by both parties,

17 c. clearly describe the obligations of the parties, and

18 d. outline fees for the professional representation.

19 3. An individual or entity engaged for professional
20 representation by a student athlete shall ensure the student athlete
21 discloses the professional relationship to the postsecondary
22 institution as required by this section.

23 ~~B. Professional representation provided by athlete agents shall~~
24 ~~be by persons licensed pursuant to the Revised Uniform Athlete~~

~~Agents Act or superseding law. An athlete agent representing a student athlete shall comply with the federal Sports Agent Responsibility and Trust Act, Chapter 104, Section 7801 et seq. of Title 15 of the United States Code.~~

~~C.~~ A student athlete who enters into a contract providing compensation to the student athlete for use of his or her name, image, or likeness or for professional representation shall disclose the contract in a manner designated by the postsecondary institution, but in any event within seventy-two (72) hours after entering into the contract or before the next athletic event in which the student athlete is eligible to participate, whichever occurs first.

SECTION 4. AMENDATORY 70 O.S. 2021, Section 820.25, is amended to read as follows:

Section 820.25. A. ~~A student athlete shall not enter into a contract that provides compensation to the student athlete for use of his or her name, image or likeness if a provision of the contract is in conflict with a provision of the postsecondary institution's team contract.~~

~~B.~~ A student athlete shall not ~~enter into a contract with a third party that provides compensation to the student athlete~~ use a postsecondary institution's marks for the purpose of securing compensation for use of his or her name, image, or likeness ~~or athletic reputation if:~~

1 ~~1. The contract requires the student athlete to display the~~
2 ~~third party's apparel or to otherwise advertise for the third party~~
3 ~~during team activities;~~

4 ~~2. Compliance with the third party contract would conflict with~~
5 ~~a team contract; or~~

6 ~~3. The contract allows for the use or consents to the use of~~
7 ~~any institutional marks during the student athlete's third party~~
8 ~~contract activities.~~

9 ~~C. A team contract of a postsecondary institution entered into,~~
10 ~~modified or renewed on or after the effective date of this Act shall~~
11 ~~not prevent a student athlete from using his or her name, image or~~
12 ~~likeness for a commercial purpose when the student athlete is not~~
13 ~~engaged in team activities unless authorized by the institution.~~

14 ~~D. B.~~ A student athlete shall not enter into a name, image, and
15 likeness agreement involving a commercial product or service that
16 conflicts with a written policy of the postsecondary institution
17 ~~which is in compliance with the bylaws and legislation of the~~
18 ~~applicable collegiate athletic association including, but not~~
19 ~~limited to, sports wagering or banned substances or that negatively~~
20 impacts or reflects adversely on the postsecondary institution or
21 its athletic programs including, but not limited to, generating
22 public disrepute, embarrassment, scandal, ridicule or otherwise
23 negatively impacting the reputation or the moral or ethical
24 standards of the postsecondary institution.

1 ~~E. C.~~ A contract for the use of a student athlete's name,
2 image, or likeness or a contract for professional representation
3 related to name, image, or likeness that is formed while the student
4 athlete is participating in an intercollegiate sport at a
5 postsecondary educational institution may not extend beyond the
6 student athlete's participation in the sport at the institution.

7 ~~F. Nothing in the Student Athlete Name, Image and Likeness~~
8 ~~Rights Act shall be construed to authorize a student athlete to~~
9 ~~assert any right or interest as a party to or intended beneficiary~~
10 ~~of team contracts or to create a right of one or more student~~
11 ~~athletes to participate in the negotiation, awarding or earnings of~~
12 ~~team contracts.~~

13 D. A postsecondary institution may adopt reasonable time,
14 place, and manner restrictions to prevent a student athlete's name,
15 image, or likeness activities from interfering with team activities,
16 the postsecondary institution's operations, or the use of the
17 institution's facilities. A postsecondary institution may receive
18 compensation for the use of its institutional marks or facilities in
19 conjunction with a student athlete's name, image, and likeness
20 activities.

21 E. A collegiate athletic association shall not prohibit a
22 postsecondary institution from establishing agreements with a third-
23 party entity to act on its behalf to identify, facilitate, enable,
24 or support student athlete name, image, and likeness activities.

1 F. An institution may require a student athlete to take courses
2 or receive education or training in contracts, financial literacy,
3 or any other subject the postsecondary institution deems necessary
4 to prepare a student athlete to engage in name, image, and likeness
5 activities.

6 SECTION 5. AMENDATORY 70 O.S. 2021, Section 820.26, is
7 amended to read as follows:

8 Section 820.26. ~~Each postsecondary institution shall determine~~
9 ~~a date on or before July 1, 2023, upon which the~~ The provisions of
10 the Student Athlete Name, Image and Likeness Rights Act ~~will~~ shall
11 be ~~recognized by the postsecondary institution~~ effective
12 immediately.

13 SECTION 6. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 820.27 of Title 70, unless there
15 is created a duplication in numbering, reads as follows:

16 A. A collegiate athletic association shall not and shall not
17 authorize its member institutions to:

18 1. Prevent a student athlete at a postsecondary institution
19 from earning compensation from the use of his or her name, image, or
20 likeness;

21 2. Provide a prospective student athlete with compensation in
22 relation to the use of his or her name, image, or likeness;

23 3. Penalize a student athlete or prevent a student athlete from
24 full participation in an intercollegiate sport because he or she

1 obtains professional representation or receives assistance with
2 services associated with name, image, or likeness activities
3 including with contracts or other legal matters from an individual,
4 entity, or a postsecondary institution; or

5 4. Allow compensation earned by a student athlete for the use
6 of his or her name, image, or likeness or athletic reputation to
7 affect the amount, duration, or renewal of or eligibility for any
8 athletic grant-in-aid or other institutional scholarship; provided,
9 however, compensation earned by a student athlete for the use of his
10 or her name, image, or likeness or athletic reputation may be used
11 for the calculation of income for determining eligibility for need-
12 based financial aid.

13 B. A collegiate athletic association shall not and shall not
14 authorize its member institutions to:

15 1. Prevent a postsecondary institution from participation in
16 intercollegiate athletics because a student athlete in attendance
17 has previously earned or intends to earn compensation for the use of
18 his or her name, image, or likeness;

19 2. Entertain a complaint, open an investigation, or take any
20 other adverse action against a postsecondary institution for
21 engaging in any activity protected in the Student Athlete Name,
22 Image and Likeness Rights Act or for involvement in student athlete
23 name, image, or likeness activities; or
24

1 3. Penalize a postsecondary institution from participation in
2 intercollegiate athletics because an individual or entity whose
3 purpose includes supporting or benefitting the postsecondary
4 institution or its athletic programs violates the collegiate
5 athletic association's rules or regulations with regard to student
6 athlete name, image, or likeness activities.

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

13 SECTION 7. AMENDATORY 70 O.S. 2021, Section 822.1, is
14 amended to read as follows:

15 Section 822.1. As used in Sections ~~2~~ 822.2 and ~~3~~ 822.3 of this
16 ~~act~~ title:

17 1. "Immediate family" means a spouse, parent, legal guardian,
18 child, sibling, grandparent, domestic partner or any individual
19 whose close association with the student-athlete is the practical
20 equivalent of a family relationship;

21 2. "Person" means an individual, corporation, business trust,
22 estate, trust, partnership, limited liability company, association,
23 joint venture, firm or any other legal or commercial entity;
24

1 3. ~~"Student-athlete" means a student at any public or private~~
2 ~~institution of postsecondary education in this state or a student~~
3 ~~residing in this state who has applied, is eligible to apply, or may~~
4 ~~be eligible to apply in the future to a public or private~~
5 ~~institution of postsecondary education who engages in, is eligible~~
6 ~~to engage in, or may be eligible to engage in any intercollegiate~~
7 ~~sporting event, contest, exhibition or program~~ shall have the same
8 meaning as defined in the Revised Uniform Athlete Agents Act; and

9 4. "Transaction" means any action or set of actions occurring
10 between two or more persons for the sale or exchange of any property
11 or services.

12 SECTION 8. It being immediately necessary for the preservation
13 of the public peace, health or safety, an emergency is hereby
14 declared to exist, by reason whereof this act shall take effect and
15 be in full force from and after its passage and approval.

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