

HOUSE BILL NO. 507

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology

on March 2, 2022)

(Patron Prior to Substitute--Delegate Austin)

A BILL to amend and reenact § 54.1-526 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 23.1-408.1, relating to intercollegiate athletics; student-athletes; compensation and representation for name, image, or likeness.

Be it enacted by the General Assembly of Virginia:

1. That § 54.1-526 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 23.1-408.1 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.

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

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

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

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

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

38 C. No athletic association, athletic conference, or other organization with authority over
39 intercollegiate athletics shall prohibit or prevent an institution from becoming a member of the association,
40 conference, or organization or participating in intercollegiate athletics sponsored by such association,
41 conference, or organization as a consequence of any student-athlete earning compensation for the use of
42 his name, image, or likeness or obtaining representation by an athlete agent or attorney in connection with
43 issues related to name, image, or likeness.

44 D. No student-athlete shall earn compensation for the use of his name, image, or likeness in
45 connection with any of the following:

46 1. Alcohol and alcoholic beverages;

47 2. Adult entertainment;

48 3. Cannabis, cannabinoids, cannabidiol, or other derivatives, not including hemp or hemp products;

49 4. Controlled substances, as defined in § 54.1-3401;

50 5. Performance enhancing drugs or substances such as steroids or human growth hormone;

51 6. Drug paraphernalia, as defined in § 18.2-265.1;

52 7. Tobacco, tobacco products, alternative nicotine products, nicotine vapor products, and similar
53 products and devices;

54 8. Weapons, including firearms and ammunition for firearms; and

55 9. Casinos or gambling, including sports betting.

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

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

64 G. Prior to executing an agreement concerning the use of his name, image, or likeness, a student-
65 athlete shall disclose such agreement to the institution at which he is enrolled in a manner designated by
66 the institution. If a student-athlete discloses a potential agreement that conflicts with an existing
67 institutional agreement, the institution shall disclose the relevant terms of the conflicting agreement to the
68 student-athlete.

69 H. An institution may prohibit a student-athlete from using his name, image, or likeness to earn
70 compensation if the proposed use conflicts with an existing institutional agreement.

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

75 J. Nothing in this section shall be construed to impact the employment status of a student-athlete.
76 No student-athlete shall be considered an employee of an institution based on participation in
77 intercollegiate athletics.

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

81 **§ 54.1-526. Definitions.**

82 As used in this chapter, unless the context requires a different meaning:

83 "Agency contract" means an agreement in which a student-athlete authorizes a person to negotiate
84 or solicit on behalf of the student-athlete a professional sports services contract or endorsement contract.

85 "Athlete agent" means an individual, whether or not registered under this chapter, who (i) directly
86 or indirectly recruits or solicits a student-athlete to enter into an agency contract or, for compensation,
87 procures employment or offers, promises, attempts, or negotiates to obtain employment for a student-
88 athlete as a professional athlete or member of a professional sports team or organization; (ii) for
89 compensation or in anticipation of compensation related to a student-athlete's participation in athletics (a)
90 serves the student-athlete in an advisory capacity on a matter related to finances, business pursuits, or
91 career management decisions, unless the individual is an employee of an educational institution acting
92 exclusively as an employee of the institution for the benefit of the institution, or (b) manages the business
93 affairs of the student-athlete by providing assistance with bills, payments, contracts, or taxes; ~~or~~ (iii) in
94 anticipation of representing a student-athlete for a purpose related to the student-athlete's participation in
95 athletics (a) gives consideration to the student-athlete or another person, (b) serves the student-athlete in
96 an advisory capacity on a matter related to finances, business pursuits, or career management decisions,
97 or (c) manages the business affairs of the student-athlete by providing assistance with bills, payments,
98 contracts, or taxes; or (iv) represents a student-athlete in connection with issues related to name, image,
99 or likeness, including negotiating, securing, obtaining, arranging, and managing name, image, or likeness
100 opportunities. "Athlete agent" does not include an individual who (a) acts solely on behalf of a professional
101 sports team or organization or (b) is a licensed, registered, or certified professional and offers or provides
102 services to a student-athlete customarily provided by members of the profession, unless the individual (1)
103 also recruits or solicits the student-athlete to enter into an agency contract, (2) also, for compensation,
104 procures employment or offers, promises, attempts, or negotiates to obtain employment for the student-

105 athlete as a professional athlete or member of a professional sports team or organization, or (3) receives
106 consideration for providing the services calculated using a different method than for an individual who is
107 not a student-athlete.

108 "Athletic director" means the individual responsible for administering the overall athletic program
109 of an educational institution or, if an educational institution has separately administered athletic programs
110 for male students and female students, the athletic program for males or the athletic program for females,
111 as appropriate.

112 "Director" means the Director of the Department of Professional and Occupational Regulation.

113 "Educational institution" means a public or private (i) elementary school, (ii) secondary school,
114 (iii) technical or vocational school, (iv) community college, or (v) institution of higher education.

115 "Endorsement contract" means an agreement under which a student-athlete is employed or receives
116 consideration to use on behalf of the other party any value that the student-athlete may have because of
117 publicity, reputation, following, or fame obtained because of athletic ability or performance.

118 "Enrolled" or "enrolls" means registered for courses and attending athletic practice or class.

119 "Intercollegiate sport" means a sport played at the collegiate level for which eligibility
120 requirements for participation by a student-athlete are established by a national association that promotes
121 or regulates collegiate athletics.

122 "Interscholastic sport" means a sport played between educational institutions that are not
123 community colleges or institutions of higher education.

124 "Licensed, registered, or certified professional" means an individual, other than an athlete agent,
125 who is licensed, registered, or certified as an attorney, dealer in securities, financial planner, insurance
126 agent, real estate broker or sales agent, tax consultant, accountant, or member of a profession by the
127 Commonwealth or a nationally recognized organization that licenses, registers, or certifies members of
128 the profession on the basis of experience, education, or testing.

129 "Person" means an individual, estate, business or nonprofit entity, public corporation, government
130 or governmental subdivision, agency, or instrumentality or other legal entity.

131 "Professional sports services contract" means an agreement under which an individual is employed
132 as a professional athlete or agrees to render services as a player on a professional sports team or with a
133 professional sports organization.

134 "Record" means information that is inscribed on a tangible medium or that is stored in an electronic
135 or other medium and is retrievable in perceivable form.

136 "Recruit or solicit" means an attempt to influence the choice of an athlete agent by a student-athlete
137 or, if the student-athlete is a minor, a parent or guardian of the student-athlete. "Recruit or solicit" does
138 not include giving advice on the selection of a particular agent in a family, coaching, or social situation
139 unless the individual giving the advice does so because of the receipt or anticipated receipt of an economic
140 benefit, directly or indirectly, from the agent.

141 "Registration" means registration as an athlete agent.

142 "Sign" means, with present intent to authenticate or adopt a record, (i) to execute or adopt a tangible
143 symbol or (ii) to attach to or logically associate with the record an electronic symbol, sound, or process.

144 "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States
145 Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

146 "Student-athlete" means an individual who is eligible to attend an educational institution and
147 engages in, is eligible to engage in, or may be eligible in the future to engage in any interscholastic or
148 intercollegiate sport. "Student-athlete" does not include, for a particular interscholastic or intercollegiate
149 sport, an individual permanently ineligible to participate in that sport.

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