

CELEBRITY AND PUBLICITY RIGHTS LEGISLATION

Proposed by Matthew Mitten^{*}, Stephen Ross[†], Doug Allen[‡], Barbara Osborne[§]

1. Except as otherwise provided herein, all intercollegiate student-athletes shall have the right to earn fair market value compensation for the commercial use of their individual celebrity and publicity rights by persons or entities other than their respective colleges or universities and associations of colleges and universities.
 - a. For purposes of this law, “celebrity and publicity rights” includes an individual student-athlete’s name, nick name(s), image, likeness, signature, social media accounts, and any other readily identifiable sports-related personal characteristics or traits (including his or her current college sport uniform number)
 - b. For purposes of this law, “celebrity and publicity rights” does not include university’s name, trademarks and service marks, logos, uniform designs and other identifiers (which may be used only with the university’s written consent); current, historical, or future individual playing statistics; or athletic performances depicted or included in any form of media broadcasts (unless used in connection with the advertising, marketing, promotion, or sale of products and services other than the athletic event itself, its participating colleges or universities, or sponsoring associations of colleges and universities).
2. For the purpose of determining the scope of intercollegiate student-athletes’ celebrity and publicity rights, state laws are preempted.
3. No college or university may agree with any other college or university to condition a student’s participation in intercollegiate athletics on limitations on their licensing of celebrity and publicity rights inconsistent with this Act or accompanying regulations.
 - a. A college or university may individually condition an athletic scholarship or grant-in-aid on participation in a group licensing arrangement pursuant to section 4b
 - b. A college or university may individually impose restrictions on student-athlete celebrity and publicity rights, including
 - i. Time commitments during their respective sport’s season of competition
 - ii. Requirements that their receipt of compensation from such rights be deferred until the end of an academic year
 - iii. Limitations or prohibitions on individual student-athlete’s celebrity and publicity rights agreements with persons or entities whose products or services are competitive with a university’s current sponsors
 - iv. Limitations or prohibitions on individual student-athlete’s celebrity and publicity rights agreements with persons or entities whose products or

^{*} Professor of Law and Director, National Sports Law Institute, Marquette University

[†] Professor of Law and Director, Center for the Study of Sports in Society, The Pennsylvania State University

[‡] Retired Professor from Practice of Labor and Employment Relations, The Pennsylvania State University, Founding President of Players, Inc. (collective licensing agency of the NFL Players Association)

[§] Professor of Sport Administration, Adjunct Professor of Law, Sport Administration/Law Degree Coordinator, University of North Carolina

services it deems to be immoral, unsafe, or to adversely affect its reputation.

4. Intercollegiate student-athletes may individually license their celebrity and publicity rights subject to the following limitations and provisions:
 - a. Disclosure of terms and amount of compensation for NIL rights license and for appearances, endorsements, autographs, or related services, to the university and to the Certified Regulatory Entity set forth in section 5
 - b. Athletes may grant exclusive or non-exclusive celebrity and publicity rights to their University, an/or its licensing affiliation, to be used for group licensing purposes only.
 - c. Revenues attributable to licensing of group player rights will be equally divided among all players on the team who have provided group licensing rights in a given licensing year, provided that an individual player who makes appearances, provides endorsements, and/or signs autographs for a group licensee or whose celebrity or publicity rights are incorporated into or used in connection with individual products (e.g., jerseys, bobble heads, posters, etc.) distributed or sold by a group licensee may receive fair market value compensation for the commercial use of his or her individual celebrity and publicity rights .
 - d. Athlete must be a full-time student and eligible athlete during a licensing year to receive compensation for that year. Arrangement expires with eligibility if player leaves team.
 - e. NIL compensation may not exceed fair market value of athlete's NIL and not reflect compensation for on-field performance or athletic services ("pay for play")
 - f. For representation in connection with individual NIL licensing rights agreements, athletes may only contract with and use marketing agents certified by the Certified Regulatory Entity set forth in section 5 with disclosure to the university
 - g. Individual licensing agreements may not exceed one year in duration
5. The Department of Education shall designate an organization as a Certified Regulatory Entity (CRE) to carry out the purposes of this section, on request of an association of universities:
 - a. The designation shall set forth the means by which the CRE's expenses shall be funded, which shall reflect a fair allocation between players, sponsors, and universities
 - b. The CRE shall promulgate regulations to prevent evasion of the limitations set forth herein, and to ensure that a student-athlete's individual or pro rata compensation for celebrity and publicity rights does not exceed fair market value of the licensing of these rights or constitute compensation for individual or team athletic performance in the particular sport ("pay for play")
 - i. Entity will follow procedures for informal rulemaking in Administrative Procedure Act in promulgating regulations
 - ii. In lieu of judicial review, arbitration using processes set forth in Amateur Sports Act shall resolve challenges to regulations that are arbitrary and

- capricious, or unsupported by substantial evidence, using review standards that would apply to judicial review of an agency decision under the APA
- c. Where an athlete receives NIL compensation from an individual or entity that would be considered by intercollegiate athletic regulations to be a ‘representative of the university’s athletic interest’ (i.e. a ‘booster’), the licensee shall have the burden of proof to establish compliance with section 4-e. .
 6. Universities may utilize player’s name and image strictly to promote the team and ticket sales, as long as that use does not associate a player with a commercial product or service.
 7. Universities may not restrict academic support (including scholarships) or eligibility to participate in intercollegiate athletics based on a student’s retention of a personal marketing representative certified pursuant to section 4-g
 8. Universities may provide general educational assistance to all student-athletes in facilitating the promotion of their celebrity and publicity rights, but cannot assist individual student-athletes or their certified marketing agents in soliciting or obtaining individual celebrity and publicity rights or negotiating their terms.
 9. Subject to section 10, the following agreements among associations of universities (i.e. the NCAA, NAIA, athletic conferences) shall not constitute violations of antitrust laws:
 - a. to impose sanctions on a member university and its employees or representatives of its athletics interests, or to declare student-athletes ineligible for participation in athletics, for violations of this statute or regulations duly promulgated pursuant to section 5;
 - b. to cap the maximum value of an athletic scholarship to the full cost of attendance at the student-athlete’s university, and the maximum annual cash payment or their in-kind equivalent to individual student-athletes for achieving academic requirements or graduating with an undergraduate or graduate degree to not less than \$5,000;
 - c. to impose a maximum number of hours per week on the time a student- athlete may spend engaging in activities related to intercollegiate athletics participation; or
 - d. to impose a minimum number of hours per week on the time a student-athlete must spend engaged in class attendance, study hall, and other educational activities related to their course of study as a full-time student.
 - e. To require member institutions to follow regulations of the CRE pursuant to section 5.
 10. Section 9 shall not apply if the claimant can demonstrate by clear and convincing evidence that the sanctions or period of student-athlete ineligibility are disproportionate and unreasonable in length or scope in relation to the specific violation of this statute or accompanying regulations.

Commentary

We can assist in crafting legislative history that will provide additional clarification, including:

- Defining pay-for-play to include performance bonuses, or awards for future performance, but that would exclude (and thus permit) compensation for NIL licensing that recognizes an athlete's increased celebrity due to past performance (Sec. 5-b)
- Making clear that the provisions to limit improper aid by boosters in Sec. 5-c would NOT apply to businesses or individuals whose sole relationship with a university is a commercial sponsorship