

South Carolina General Assembly
124th Session, 2021-2022

A35, R48, S685

STATUS INFORMATION

General Bill

Sponsors: Senators Hembree, Kimpson, Setzler, Scott, Turner, Malloy, Matthews and Jackson

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Introduced in the Senate on March 23, 2021

Introduced in the House on April 13, 2021

Last Amended on April 8, 2021

Passed by the General Assembly on April 29, 2021

Governor's Action: May 6, 2021, Signed

Summary: Athletics

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
3/23/2021	Senate	Introduced and read first time (Senate Journal-page 5)
3/23/2021	Senate	Referred to Committee on Education (Senate Journal-page 5)
3/31/2021	Senate	Committee report: Favorable with amendment Education (Senate Journal-page 13)
4/1/2021		Scrivener's error corrected
4/7/2021	Senate	Read second time (Senate Journal-page 63)
4/8/2021	Senate	Committee Amendment Adopted (Senate Journal-page 44)
4/8/2021	Senate	Amended (Senate Journal-page 44)
4/8/2021	Senate	Read third time and sent to House (Senate Journal-page 44)
4/8/2021	Senate	Roll call Ayes-22 Nays-21
4/9/2021		Scrivener's error corrected
4/13/2021	House	Introduced and read first time (House Journal-page 13)
4/13/2021	House	Referred to Committee on Education and Public Works (House Journal-page 13)
4/22/2021	House	Committee report: Favorable Education and Public Works (House Journal-page 22)
4/28/2021	House	Read second time (House Journal-page 23)
4/28/2021	House	Roll call Yeas-103 Nays-15 (House Journal-page 23)
4/29/2021	House	Read third time and enrolled (House Journal-page 5)
5/6/2021		Signed By Governor
5/4/2021		Ratified R 48
5/13/2021		Effective date See Act for Effective Date
5/13/2021		Act No. 35

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VERSIONS OF THIS BILL

[3/23/2021](#)

[3/31/2021](#)

[4/1/2021](#)

[4/8/2021](#)

[4/9/2021](#)
[4/22/2021](#)
[4/23/2021](#)

(A35, R48, S685)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 158 TO TITLE 59 SO AS TO PROVIDE FOR THE COMPENSATION OF INTERCOLLEGIATE ATHLETES FOR THE USE OF THEIR NAME, IMAGE, OR LIKENESS; TO AMEND SECTION 59-102-20, RELATING TO DEFINITIONS IN THE UNIFORM ATHLETE AGENTS ACT OF 2018, SO AS TO REVISE A DEFINITION; TO AMEND SECTION 59-102-70, RELATING TO MEASURES THE DEPARTMENT OF CONSUMER AFFAIRS MAY TAKE AGAINST REGISTERED ATHLETE AGENTS FOR CERTAIN CONDUCT, SO AS TO REQUIRE CERTAIN CONTINUING EDUCATION FOR ATHLETE AGENTS; BY ADDING SECTION 59-102-85 SO AS TO PROVIDE THE DEPARTMENT SHALL MAINTAIN A PUBLIC DIRECTORY OF ALL REGISTERED ATHLETE AGENTS IN GOOD STANDING; TO AMEND SECTION 59-102-90, RELATING TO REGISTRATION AND RENEWAL APPLICATION FEES, SO AS TO REVISE THE FEES; TO AMEND SECTION 59-102-100, RELATING TO ATHLETE AGENCY CONTRACTS, SO AS TO PROVIDE LIMITS ON AGENCY COMPENSATION FOR INTERCOLLEGIATE ATHLETE NAME, IMAGE, OR LIKENESS COMPENSATION CONTRACTS; TO MAKE THE PROVISIONS OF THIS ACT EFFECTIVE FOR EACH INSTITUTION OF HIGHER LEARNING UPON THE EARLIER OF JULY 1, 2022, OR CERTIFICATION BY THE ATTORNEY GENERAL TO THE GOVERNOR OF THE ENACTMENT OF RULES CONSISTENT WITH THE PROVISIONS CONTAINED IN THIS ACT BY THE COLLEGIATE GOVERNING BODY OF THE INSTITUTION OF HIGHER LEARNING; AND TO PROVIDE UPON CERTIFICATION BY THE ATTORNEY GENERAL THE PROVISIONS OF THIS ACT ARE SUSPENDED UNTIL THE GENERAL ASSEMBLY TAKES FURTHER ACTION.

Be it enacted by the General Assembly of the State of South Carolina:

Compensation of intercollegiate athletes

SECTION 1. Title 59 of the 1976 Code is amended by adding:

“CHAPTER 158

Intercollegiate Athletes' Compensation for Name, Image, or Likeness

Section 59-158-10. For the purposes of this chapter:

(1) 'Athlete agent' means a person who is registered with the Department of Consumer Affairs pursuant to Section 59-102-60 or Section 59-102-80. If an athlete agent is an attorney, then he must also be a member in good standing of a state bar association.

(2) 'Athletic booster' means a person or entity that has participated in or has been a member of an organization promoting an institution of higher learning's intercollegiate athletics program.

(3) 'Compensation' means any remuneration, in cash or in kind, whether provided at the time or at any subsequent date, to a student athlete. 'Compensation' does not mean any grant, scholarship, fellowship, tuition assistance, or other form of financial aid provided to a student for pursuing a post-secondary education.

(4) 'Institution of higher learning' means any post-secondary educational institution, including a technical or comprehensive educational institution.

(5) 'Intercollegiate athlete' means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in an intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, then the individual is not an intercollegiate athlete for the purposes of that sport.

(6) 'Intercollegiate sport' means a sport played at the collegiate level for which eligibility requirements for participation by an intercollegiate athlete are established by a national association that promotes or regulates collegiate athletics.

(7) 'Name, image, or likeness activities', 'name, image, or likeness contract', 'NIL activities', or 'NIL contract' means an agreement in which an intercollegiate athlete participating in intercollegiate sports authorizes a person to use his name, image, or likeness and, in return, receives consideration. This term shall include, but is not limited to, endorsement contracts.

(8) 'Recruit or solicit' means an attempt to influence the choice of an athlete agent by an intercollegiate athlete or, if the intercollegiate athlete is a minor, a parent or guardian of the intercollegiate athlete. 'Recruit or solicit' does not mean giving advice on the selection of a particular athlete agent in a family, coaching, or social situation unless the individual giving the advice does so because of the receipt or anticipated receipt of an economic benefit, directly or indirectly, from the athlete agent.

(9) ‘Team contract’ means any agreement between an intercollegiate athlete and an institution of higher learning that could impact the intercollegiate athlete’s eligibility to participate in an intercollegiate sport, including, but not limited to, scholarship agreements or participation agreements.

(10) ‘Third party’ means, with respect to an intercollegiate athlete, any entity other than the institution of higher learning in which the intercollegiate athlete is enrolled.

(11) ‘Third-party endorsement’ means an intercollegiate athlete’s public support for, approval of, or recommendation of a product or service, including, but not limited to, social media influencer marketing opportunities; personal appearances; and digital content creation, distribution, and promotion of athletic-related business activities. ‘Third-party endorsement’ does not mean the use of an intercollegiate athlete’s name, image, or likeness in news reports, commentary, entertainment, or advertisements that is incidental to such uses; the broadcast of a sports contest; the rebroadcast of a sports contest; a brief video or audio clip of a sports contest; or anything that violates a registered or licensed copyright or trademark.

Section 59-158-20. (A)(1) An intercollegiate athlete at an institution of higher learning may earn compensation for the use of his name, image, or likeness as provided for in this chapter.

(2) Compensation earned by an intercollegiate athlete for the use of his name, image, or likeness must represent a genuine payment for the use of his name, image, or likeness, independent of, rather than as a payment for, his athletic participation or performance. Compensation may only be provided by a third party.

(3) Compensation may not be provided in exchange for an intercollegiate athlete’s athletic performance or attendance at a particular institution of higher learning and may only be provided by a third party unaffiliated with the intercollegiate athlete’s institution of higher learning.

(4) A name, image, or likeness contract in conflict with the provisions of this chapter is voidable.

(B) An intercollegiate athlete may receive compensation only for the use of his name, image, or likeness for third-party endorsements, the intercollegiate athlete’s non-athletic work product, or activities related to a business that the intercollegiate athlete owns.

(C) An institution of higher learning or its athletic conference cannot directly or indirectly create or facilitate compensation opportunities for the use of an intercollegiate athlete’s name, image, or likeness.

(D) An institution of higher learning may not use or allow boosters to directly or indirectly create or facilitate compensation opportunities for the use of an intercollegiate athlete's name, image, or likeness as a recruiting inducement or as a means of paying for athletics participation.

(E) An intercollegiate athlete at an institution of higher learning may not use the institution of higher learning's facilities, uniforms provided by the institution of higher learning, or the institution of higher learning's intellectual property, including, but not limited to, the unauthorized use of a registered trademark or product protected by copyright, in connection with the use of the intercollegiate athlete's name, image, or likeness activities.

(F) Activities related to an intercollegiate athlete's use of his name, image, or likeness for compensation are prohibited from taking place during the intercollegiate athlete's participation in academic, athletic, or team-mandated activities as defined by the institution of higher learning.

(G) Activities related to an intercollegiate athlete's use of his name, image, or likeness for compensation cannot be contingent on a prospective intercollegiate athlete's enrollment at a particular institution of higher learning or its athletic conference and cannot otherwise be used as an inducement by an institution of higher learning or a booster.

(H) An institution of higher learning; an entity with a purpose that includes supporting or benefiting an institution of higher learning or its athletic programs; or an officer, director, or employee of an institution of higher learning or such an entity may not directly or indirectly compensate a current or prospective intercollegiate athlete for the use of the intercollegiate athlete's name, image, or likeness.

(I) A grant in aid, including the cost of attendance, awarded to an intercollegiate athlete by an institution of higher learning is not compensation for the purposes of this chapter and may not be revoked or reduced as a result of an intercollegiate athlete earning compensation or obtaining professional representation under this chapter. Name, image, or likeness compensation shall not be used to limit athletic grant in aid but may be used in the calculation for need-based financial aid available to the general student population.

Section 59-158-30. Earning compensation in compliance with the provisions contained in Section 59-158-40 does not affect an intercollegiate athlete's grant in aid or athletic eligibility.

Section 59-158-40. (A) Notwithstanding athletic conference or collegiate athletic association rules, bylaws, regulations, and policies to the contrary, an institution of higher learning is prohibited from adopting

or maintaining a contract, rule, regulation, standard, or other requirement that prevents or unduly restricts an intercollegiate athlete from:

(1) earning compensation for the use of his name, image, or likeness; or

(2) obtaining an athlete agent for the purpose of securing compensation for the use of his name, image, or likeness.

(B)(1) An institution of higher learning may prohibit an intercollegiate athlete from using his name, image, or likeness for compensation if the proposed use of his name, image, or likeness conflicts with:

(a) existing institutional sponsorship agreements or other contracts; or

(b) institutional values as defined by the institution of higher learning.

(2) An intercollegiate athlete may not earn compensation for the use of his name, image, or likeness for the endorsement of tobacco, alcohol, illegal substances or activities, banned athletic substances, or gambling including, but not limited to, sports betting.

(C) An institution of higher learning must disclose known prohibitions for the use of an intercollegiate athlete's name, image, or likeness at the time that an intercollegiate athlete is admitted to the institution of higher learning or when the intercollegiate athlete signs a financial aid agreement or team contract.

Section 59-158-50. An intercollegiate athlete participating in name, image, or likeness activities must abide by his institution of higher learning and its athletic department's policies with respect to missed class time and good academic standing. Good academic standing includes meeting both grade point average and course hour requirements. An intercollegiate athlete must also meet all academic requirements of the athletic association and conference that his institution of higher learning is a member of in order to participate in name, image, or likeness activities.

Section 59-158-60. (A) A prospective intercollegiate athlete who enters into a name, image, or likeness contract shall disclose the name, image, or likeness contract to his institution of higher learning and its athletic department prior to enrollment or signing a financial aid agreement with the institution of higher learning or a team contract.

(B) A current intercollegiate athlete must disclose the terms of a name, image, or likeness contract prior to signing the name, image, or likeness contract, in a manner designated by the institution of higher learning.

(C) The disclosures required by this section must:

(1) describe the proposed use of the intercollegiate athlete's name, image, or likeness, compensation arrangements, the name of the athlete agent, and a list of all parties to the name, image, or likeness contract; and

(2) be made in the manner designated by the institution of higher learning.

(D) An institution of higher learning may fund, through its athletic department, an independent, third-party administrator to support education, monitoring, disclosures, and reporting concerning name, image, or likeness activities authorized pursuant to this chapter. A third-party administrator cannot be a registered athlete agent. An athlete agent is prohibited from having any affiliation with a third-party administrator.

Section 59-158-70. (A) Name, image, or likeness contracts authorized by this chapter must have a prominent disclosure at the beginning and end of the name, image, or likeness contract that an intercollegiate athlete must acknowledge separately. The disclosure required pursuant to this section shall be worded to warn the intercollegiate athlete of potential eligibility issues that may exist under current rules and policies of athletic conferences or collegiate athletic associations concerning the use of the intercollegiate athlete's name, image, or likeness and shall clearly set forth the reporting requirements contained in Section 59-158-60.

(B) All name, image, or likeness contracts must provide for an unequivocal ten-day revocation period for the intercollegiate athlete.

(C) At least five days prior to the execution of a name, image, or likeness contract authorized by this chapter, the third party proposing to enter into the name, image, or likeness contract with the intercollegiate athlete must disclose, in writing, to the intercollegiate athlete any prior or existing association, either formally or informally, with any institution of higher learning or any prior or existing financial involvement with respect to athletics.

(D) A name, image, or likeness contract may not extend beyond an intercollegiate athlete's participation in an athletic program at an institution of higher learning.

(E) A name, image, or likeness contract shall be void if an intercollegiate athlete is convicted of a felony pursuant to Section 16-1-90.

Section 59-158-80. (A) If there is a conflict between the provisions contained in this chapter and those contained in Chapter 102, Title 59,

then the provisions of this chapter shall govern. An athlete agent representing an intercollegiate athlete in a transaction authorized pursuant to this chapter must also comply with all provisions contained in Chapter 102, Title 59 that do not conflict with the provisions contained in this chapter.

(B) An athlete agent shall comply with the federal Sports Agent Responsibility and Trust Act, 15 U.S.C. Sections 7801-7807.”

Uniform Athlete Agents Act, definitions

SECTION 2. Section 59-102-20(1) of the 1976 Code is amended to read:

“(1) ‘Agency contract’ means an agreement in which a student athlete authorizes a person to negotiate or solicit on behalf of the student athlete a professional sports services contract; an endorsement contract; or a name, image, or likeness contract, as defined in Chapter 158, Title 59.”

Uniform Athlete Agents act, continuing education

SECTION 3. Section 59-102-70 of the 1976 Code is amended by adding:

“(C) The department may suspend, refuse to renew, or revoke a person’s registration if that person fails to complete at least twenty hours of continuing athlete agent education coursework biennially. The department may promulgate regulations necessary for the approval of credit hours.”

Uniform Athlete Agents Act, online registry

SECTION 4. Chapter 102, Title 59 of the 1976 Code is amended by adding:

“Section 59-102-85. The Department of Consumer Affairs shall maintain an online, public directory of all registered athlete agents in good standing. The directory shall include each athlete agent’s registration application information that is required pursuant to this chapter.”

Uniform Athlete Agents Act, registration fees

SECTION 5. Section 59-102-90 of the 1976 Code is amended to read:

“Section 59-102-90. An application for registration or renewal of registration must be accompanied by a fee of:

- (1) one thousand five hundred dollars for an initial application for registration;
- (2) two thousand five hundred dollars for registration based on a certificate of registration issued by another state;
- (3) seven hundred dollars for an application for renewal of registration; or
- (4) one thousand dollars for renewal of registration based on a renewal of registration in another state.”

Uniform Athlete Agents Act, agent compensation limits

SECTION 6. Section 59-102-100 of the 1976 Code is amended by adding:

“(H) An agency contract for name, image, or likeness activities, as defined in Chapter 158, Title 59, may not provide for athlete agent compensation that exceeds ten percent of the name, image, or likeness contract.”

Time effective

SECTION 7. This act takes effect for each institution of higher learning in this State upon the earlier of July 1, 2022, or certification by the Attorney General to the Governor of the enactment of rules consistent with the provisions contained in this act by the institution of higher learning’s collegiate governing body. Upon certification by the Attorney General, the provisions of this act are suspended until the General Assembly takes further action.

Ratified the 4th day of May, 2021.

Approved the 6th day of May, 2021.
