

1 State of Arkansas  
2 94th General Assembly  
3 Regular Session, 2023  
4

# A Bill

HOUSE BILL 1649

5 By: Representatives M. Shepherd, Hawk  
6 By: Senators Hester, Irvin, R. Murdock  
7

## For An Act To Be Entitled

8  
9 AN ACT TO AMEND THE ARKANSAS STUDENT-ATHLETE  
10 PUBLICITY RIGHTS ACT; AND FOR OTHER PURPOSES.  
11

## Subtitle

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14 TO AMEND THE ARKANSAS STUDENT-ATHLETE  
15 PUBLICITY RIGHTS ACT.  
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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20 SECTION 1. Arkansas Code § 4-75-1302(7)(A), concerning the definition  
21 of student-athlete used under the Arkansas Student-Athlete Publicity Rights  
22 Act, is amended to read as follows:

23 (7)(A) "Student-athlete" means an individual who:

24 (i) ~~enrolled~~ Has been accepted into admission or  
25 signed a National Letter of Intent or other written agreement to enroll in an  
26 institution of higher education with the State of Arkansas; or

27 (ii) ~~at~~ Is enrolled at an institution of higher  
28 education who is eligible to engage in any varsity intercollegiate athletics  
29 program at the institution.  
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31 SECTION 2. Arkansas Code § 4-75-1303 is amended to read as follows:  
32 4-75-1303. Right to compensation.

33 (a) Except as prohibited in this subchapter, a student-athlete ~~may~~  
34 shall have the right to enter into a contract and receive compensation for  
35 the commercial use of the student-athlete's publicity rights.

36 (b) An institution of higher education, its supporting foundations, or



1 its authorized entities may identify, create, facilitate, negotiate, and  
 2 otherwise enable opportunities for a student-athlete to earn compensation for  
 3 the commercial use of the student-athlete’s publicity rights.

4 (c) A charitable organization that qualifies as an exempt organization  
 5 under 26 U.S.C. § 501(c)(3), as it existed on January 1, 2023, shall have the  
 6 right to compensate student-athletes for the commercial use of the student-  
 7 athlete’s publicity rights.

8 (d) Except as provided in this subchapter or applicable federal law,  
 9 an institution of higher education shall not uphold any rule, requirement,  
 10 standard, or other limitation of an athletic association or athletic  
 11 conference that prevents a student-athlete from earning compensation for the  
 12 commercial use of the student-athlete’s publicity rights.

13 ~~(e)~~(e) Earning compensation for the commercial use of a student-  
 14 athlete’s publicity rights shall not affect the student-athlete’s scholarship  
 15 eligibility.

16 ~~(d)~~(f) An athletic association, athletic conference, or any other  
 17 organization with authority over varsity intercollegiate athletics shall not:

18 (1) Prevent a student-athlete from receiving compensation for  
 19 the commercial use of the student-athlete’s publicity rights under this  
 20 subchapter;

21 (2) Penalize a student-athlete for receiving compensation for  
 22 the commercial use of the student-athlete’s publicity rights under this  
 23 subchapter; or

24 (3) Prevent an institution of higher education from  
 25 participating in varsity intercollegiate athletics, or otherwise penalize an  
 26 institution of higher education, as a result of a student-athlete’s receipt  
 27 of compensation under this subchapter.

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 29 SECTION 3. Arkansas Code § 4-75-1304(a), concerning conflicts under  
 30 the Arkansas Student-Athlete Publicity Rights Act, is amended to read as  
 31 follows:

32 (a) A third-party licensee or student-athlete shall not enter into a  
 33 contract for the commercial use of the student-athlete’s publicity rights if  
 34 the contract:

35 (1) Requires the student-athlete to endorse, use, solicit, sell,  
 36 market, advertise, promote, refer to, mention, display, or otherwise promote

1 the name, image, logo, product, service, purpose, campaign, business, digital  
 2 or physical address, or location of any third-party licensee or commercial  
 3 entity during a varsity intercollegiate athletic practice, competition, or  
 4 other activity;

5 (2) Conflicts with a term or condition of a contract, policy,  
 6 rule, regulation, or standard of the student-athlete's committed or enrolled  
 7 institution of higher education; or

8 (3) Involves the student-athlete's performance or lack of  
 9 performance in athletic competition.

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 11 SECTION 4. Arkansas Code § 4-75-1305(c), concerning representation  
 12 under the Arkansas Student-Athlete Publicity Rights Act, is amended to read  
 13 as follows:

14 (c) A student-athlete may rescind a publicity rights contract with a  
 15 third-party licensee or a contract for professional representation related to  
 16 publicity rights without being held liable for breach of contract and with no  
 17 obligation to return payments received before giving notice of rescission if  
 18 the student-athlete is no longer+

19 ~~(1) Enrolled at an institution of higher education;~~

20 ~~(2) Eligible to engage~~ eligible to participate in any varsity  
 21 intercollegiate athletics program at an institution of higher education; ~~or~~

22 ~~(3) Participating in varsity intercollegiate athletics at an~~  
 23 ~~institution of higher education.~~

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 25 SECTION 5. Arkansas Code § 4-75-1307(a), concerning the scope of the  
 26 Arkansas Student-Athlete Publicity Rights Act, is amended to read as follows:

27 (a) This subchapter does not:

28 (1) ~~Allow a student-athlete to seek or obtain compensation~~  
 29 Require an institution of higher education, its supporting foundations, or  
 30 its authorized entities to compensate a student-athlete for any use of the  
 31 student-athlete's publicity rights stated in § 4-75-1110;

32 (2) Require an institution of higher education or its supporting  
 33 foundations or authorized entities, athletic association, conference, or  
 34 other organization with authority over varsity intercollegiate athletics to  
 35 identify, create, facilitate, negotiate, or otherwise enable opportunities  
 36 for a student-athlete to earn compensation for the commercial use of the

1 student-athlete's publicity rights;

2 (3) Authorize a student-athlete to use the name, nicknames,  
 3 trademarks, service marks, landmarks, facilities, trade dress, uniforms,  
 4 songs, mascots, logos, images, symbols, or other intellectual property,  
 5 whether registered or not, of an institution of higher education, athletic  
 6 association, conference, or other organization with authority over varsity  
 7 intercollegiate athletics;

8 (4) Limit the right of an institution of higher education to  
 9 establish and enforce:

10 (A) Academic standards, requirements, regulations or  
 11 obligations for its students;

12 (B) Team rules of conduct or other rules of conduct;

13 (C) Standards or policies regarding the governance or  
 14 operation of or participation in varsity intercollegiate athletics; or

15 (D) Disciplinary rules generally applicable to all  
 16 students of the institution of higher education; or

17 ~~(5) Authorize any prospective student-athlete who may attend an~~  
 18 ~~institution of higher education, any third-party licensee, or anyone acting~~  
 19 ~~on behalf of the prospective student-athlete to negotiate or receive~~  
 20 ~~compensation for the commercial use of the prospective student-athlete's~~  
 21 ~~publicity rights before the student-athlete's enrollment in an institution of~~  
 22 ~~higher education or practice or competition in varsity intercollegiate~~  
 23 ~~athletics; or~~

24 ~~(6)~~ Render student-athletes employees of the institution of  
 25 higher education based on participation in varsity intercollegiate athletic  
 26 competition.

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 28 SECTION 6. Arkansas Code § 4-75-1308 is amended to read as follows:

29 4-75-1308. Civil remedy.

30 (a)(1) An institution of higher education or a student-athlete as  
 31 defined in § 4-75-1302 has a cause of action for damages against an athlete  
 32 agent or third-party licensee if the institution of higher education or  
 33 student-athlete is adversely affected by an act or omission of the athlete  
 34 agent, third-party licensee, or anyone acting on behalf of the athlete agent  
 35 or third-party licensee in violation of this subchapter.

36 (2) An institution of higher education or student-athlete is

1 adversely affected by an act or omission of an athlete agent, third-party  
 2 licensee, or anyone acting on behalf of the athlete agent or third-party  
 3 licensee, only if, because of the act or omission, the institution of higher  
 4 education or student-athlete:

5 (A) Is suspended or disqualified from participating in an  
 6 intercollegiate sport; or

7 (B) Suffers financial damage.

8 ~~(b)(3)~~ A student-athlete has a cause of action under this  
 9 section only if the student-athlete was enrolled in an institution of higher  
 10 education at the time of the act or omission.

11 (b)(1) A person or entity, regardless of residence, shall not give or  
 12 promise compensation for the use of the name, image, or likeness of a  
 13 student-athlete enrolled at an institution of higher education located in  
 14 Arkansas or of a prospective student-athlete who has entered into an  
 15 enrollment contract with an institution of higher education located in  
 16 Arkansas with the purpose of recruiting or inducing the student-athlete to  
 17 enroll at another institution of higher education.

18 (2) An institution of higher education or its supporting  
 19 foundations or authorized entities and third-party licensees shall have a  
 20 cause of action against any party that violates this section.

21 (c) In an action under this section, a prevailing plaintiff may  
 22 recover punitive damages, reasonable attorney's fees and costs, and any other  
 23 reasonable litigation expenses.

24 (d) An institution of higher education, its employees located within  
 25 this state, including athletics coaching staff, shall not be liable for any  
 26 damages related to an intercollegiate student-athlete's ability or inability  
 27 to earn compensation for the use of the student-athlete's name, image, or  
 28 likeness resulting from decisions and actions routinely taken in within the  
 29 course of their employment in intercollegiate athletics.

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