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House Bill 4816 (Substitute H-5 as passed by the House)
Sponsor: Representative Jimmie Wilson, Jr.
House Committee: Higher Education
Senate Committee: Oversight

Date Completed: 3-5-24

INTRODUCTION

The bill would create a new act to allow a high school student athlete to earn compensation from the use of the athlete's name, image, and likeness so long as the contract and athlete met certain conditions. The student athlete would have to obtain parental consent, if the student were a minor, and approval from the Michigan Highschool Athletic Association (MHSAA) before entering a written or verbal contract. A student athlete could not be compensated for endorsements of adult entertainment services, alcohol and tobacco, and firearms, among other things. Additionally, the bill would specify that individuals with authority over high school sports and a student athlete, such as a coach, could not prevent participation based on an athlete's compensation, serve as an athlete's agents, or influence an athlete's representation.

FISCAL IMPACT

The bill would have no fiscal impact on the State and a minimal fiscal impact on intermediate school districts, school districts, and public school academies. Schools could need to update rules and documents, but those costs are likely to be covered under current funding levels.

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CONTENT

The bill would enact a the "Compensation of High School Student Athletes Act" to do the following:

- Allow a student athlete to earn compensation from the athlete's use of the athlete's name, image, and likeness rights under certain conditions.
- Prohibit a student athlete from earning compensation from the athlete's use of the athlete's name, image, and likeness through activities that involved or endorsed products that minors generally cannot use or consume.
- Prohibit a student athlete from entering a written contract as a minor without parental consent.
- Require a student athlete to seek MHSAA approval to enter a verbal or written contract.
- Prohibit a high school or a high school athletic association from preventing compensation for acceptable commercial use of a student athlete's name, image, or likeness.
- Prohibit a student athlete from missing school due to a contract.
- Prohibit a student athlete's contract from requiring the athlete to display sponsor's apparel during official team activities.
- Prohibit individuals with authority over students from preventing participation in sports based on an athlete's earning of compensation.
- Prohibit a high school or an associated individual from assisting a student athlete in earning compensation from the athlete's use of name, image, and likeness.
- Specify that schools would not be prohibited from establishing and enforcing rules or conduct or academic standards.
- Require nonprofit trade associations that represented high schools to provide the Department of Education (MDE) with reports of congressional actions on student athlete legislation for 2024 and 2025 and require the associations to report on their high schools' preparedness in implementing the Act.

Except as otherwise provided, a student athlete of a high school could earn compensation from the student athlete's use of the student athlete's name, image, and likeness rights from activities such as commercials, product endorsements, personal appearances, autograph sessions, merchandise or apparel sales, group licensing, or acting as a social media influencer.

"High school" would mean a nonpublic school or public school that offers at least one of grades nine to 12. "Nonpublic school" would mean a private, denominational, or parochial school. "Public school" would mean a public elementary or secondary educational entity or agency that is established under the Revised School Code or under other law of the State, has as its primary mission the teaching and learning of academic and vocational-technical skills and knowledge, and is operated by a school district, intermediate school district, school of excellence corporation, public school academy corporation, strict discipline academy corporation, urban high school academy corporation, or by the MDE, the State board, or another public body.

A student athlete of a high school could not earn compensation from the student athlete's use of the student athlete's name, image, and likeness rights from activities that involved, displayed, or endorsed any of the following:

- An adult entertainment product or service.
- An alcohol product.
- A tobacco or electronic smoking product or device.
- A controlled substance.

- Any form of gambling, including sports betting and horse racing.
- A weapon, firearm, or ammunition.
- A nutritional supplement.

A student athlete of a high school could not enter into a written agreement or contract with a third party to earn compensation from the student athlete's use of the student athlete's name, image, and likeness rights if any of the following applied:

- The third party was an entity that was formed for the express purpose of receiving or pooling funds to create or provide name, image, and likeness opportunities for student athletes.
- The agreement or contract was contingent on the student athlete's athletic performance or achievement.
- The agreement or contract required the student athlete to miss school or instructional time to meet the obligations of the agreement or contract.

In addition to any prohibition described above, a student athlete could not enter an apparel contract with a third party to earn compensation from the student athlete's use of the student athlete's name, image, or likeness rights, if the contract required the student athlete to display a sponsor's apparel, or otherwise advertise for a sponsor, during an official team activity.

Except as otherwise specified below, before a student athlete entered into a written agreement or contract with a third party to earn compensation from the student athlete's use of the student athlete's name, image, and likeness, at least one parent or legal guardian of the student athlete would have to consent to the student athlete's entrance into the written agreement or contract.

The provisions describe above would not apply to a student athlete who was less than 18 years of age and who was emancipated or a student athlete of a high school who was 18 years of age or older.

MHSAA Approval

In addition to parental consent, a student athlete who intended to enter a verbal or written opportunity or contract that would provide compensation to the student athlete for use of the student athlete's name, image, or likeness rights would have to disclose the proposed opportunity or contract to an official of the MHSAA at least seven days before committing to the opportunity or contract, for review by the MHSAA. "Athletic association" would mean an entity that operates for the purpose of developing common rules for the eligibility and competition of high school student athletes in the State.

If the MHSAA identified a conflict with the student athlete's proposed opportunity or contract, the MHSAA would have to communicate that conflict to the student athlete so that the student athlete could negotiate a revision of the opportunity or contract to avoid the conflict, and that revision would be subject to additional review and approval by the MHSAA.

A policy of a high school's athletic program could not prevent a student athlete of the high school from receiving compensation for using the student athlete's name, image, or likeness rights for a commercial purpose when the student was not engaged in an official team activity, including participating in or being part of an advertisement that was created while not engaged in an official team activity but that could otherwise be broadcasted, displayed, or disseminated at any time.

The Act would not apply to a contract entered, modified, or renewed on or before the Act's effective date.

Prohibited Activities for Individuals with Authority of Student

A high school could not uphold any rule, requirement, standard, or other limitation that would prevent a student at that high school from fully participating in high school athletics based on that student earning compensation from the student's use of the student's name, image, or likeness rights.

Except as otherwise specified, a high school or any officer, director, or employee of the high school, including a coach, a member of a coach staff, or any individual associated with the high school athletic department, could not do any of the following relating to a student athlete's name, image, likeness rights, or athletic reputation:

- Identify or otherwise assist with opportunities for a student athlete to earn compensation from a third party.
- Serve as a student athlete's agent.
- Receive compensation from the student athlete or a third party for facilitating or enabling those opportunities.
- Attempt to influence the student athlete's high school of enrollment or choice of professional representation related to those opportunities.
- Attempt to reduce the student athlete's opportunities from competing third parties.
- Attend any meeting at which a contract for compensation from those opportunities was negotiated or completed between the student athlete and a third party.

These prohibitions would not apply to an individual acting in the individual's capacity as the parent or legal guardian of a student athlete.

An athletic association, conference, or other group or organization with authority over high school athletics could not do either of the following:

- Prevent a student at a high school from fully participating in high school athletics based on the student earning compensation from the student's use of the student's name, image, or likeness rights.
- Prevent a high school from fully participating in high school athletics without penalty based on a student of the high school's use of the student's name, image, or likeness rights.

A high school, athletic association, conference, or other group or organization with authority over high school athletics could not do any of the following:

- Provide a student athlete of a high school or a prospective student athlete of a high school with compensation in relation to the student athlete's name, image, or likeness rights.
- Prevent a student athlete of a high school from obtaining professional representation in relation to contracts or legal matters regarding opportunities to be compensated, including representation provided by an athlete agent or legal representation by an attorney.
- Prevent a student athlete of a high school from earning compensation from a third party as a result of the student's name, image, likeness rights, or athletic reputation, so long as the student's contract with the third party did not require the student to advertise for a sponsor in person during an official, mandatory team activity.

"Compensation" would include food, shelter, medical expenses, insurance, cash, barter, free products, and discounts. "Group" would include a booster club, a dad's club, or an athletic foundation.

A high school, athletic association, conference, or other group or organization with authority over high school athletics could not interfere with or prevent a student from fully participating in high school athletics based on the student obtaining professional representation in relation to contracts or legal matters regarding the student's opportunities to earn compensation, including representation provided by an athlete agent or financial advisor, or legal representation provided by an attorney.

An athletic association, conference, or other group or organization with authority over high school athletics could not prevent a high school from fully participating in high school athletics without penalty as a result of a student of the high school obtaining professional representation in relation to contracts or legal matters regarding the student's opportunities to earn compensation, including representation provided by an athlete agent or financial advisor, or legal representation by an attorney.

Professional representation by an athlete agent, financial advisor, or attorney would have to be provided by persons licensed in the State, as applicable. A legal settlement arising under the Act could not permit noncompliance with the Act.

Reports

By December 31, 2024, and by December 31, 2025, any nonprofit trade association that represented high schools in the State would have to provide to the MDE for each of those years, respectively, a written summary of any congressional action on legislation on student athlete name, image, and likeness compensation.

By June 30, 2026, any nonprofit trade association that represented high schools in the State would have to provide to the MDE a written summary of the preparedness of the association's respective member high schools in implementing the Act.

High School Enforcement

The Act would not require a high school, athletic association, conference, or other group or organization with authority over high school athletics to identify, create, facilitate, negotiate, or otherwise enable opportunities for a student athlete of a high school to earn compensation for the student's use of the student's name, image, or likeness rights.

The Act would not establish or bestow the right of a student to use the name, trademarks, services marks, logos, symbols, or any other intellectual property, whether registered or not, of a high school, athletic association, conference, or other group or organization with authority over high school athletics, in furtherance of the student's opportunities to earn compensation for the student's use of the student's name, image, or likeness rights.

The Act would not limit the right of a high school or athletic association to establish and enforce any of the following:

- Academic standards, requirements, regulations, or obligations for its students.
- Team rules of conduct or other rules of conduct.
- Standards or policies regarding the governance or operation of or participation in high school varsity athletics.
- Disciplinary rules and standards generally applicable to all students at the high school.
- Rules relating to amateur status that did not conflict with the Act.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.