Title: To protect the name, image, and likeness rights of student athletes and to promote fair competition among intercollegiate athletics, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the [“______ Act of 2023”].

SEC. 2. DEFINITIONS.

In this Act:

1. INTERCOLLEGIATE ATHLETIC COMPETITION.—The term “intercollegiate athletic competition” means any contest, game, meet, match, tournament, regatta, or other event in which student athletes or varsity sports teams compete.

2. ACADEMIC STIPEND.— The term “academic stipend” shall mean a payment made to a student athlete by (and only by) an institution in or attributable to each academic year (i.e., the annual period commencing on August 1 and ending on July 31 of each calendar year).

3. COMPENSATION.—The term “compensation”—

   (A) means any form of payment or remuneration in cash, benefits, awards, or in any other form, including payments for—

   (i) licenses relating to, or the use of, name, image, and likeness rights; or
   (ii) any other Federal or State intellectual or intangible property right; and

   (B) does not include—

   (i) grants-in-aid;
   (ii) Federal Pell Grants and other Federal or State grants unrelated to and not awarded with regard to participation in intercollegiate athletics;
   (iii) health insurance and the costs of health care, including health insurance and health care costs wholly or partly self-funded by an institution, interstate intercollegiate athletic association, or conference;
   (iv) disability and loss-of-value insurance, including disability and loss-of-value insurance that is wholly or partly self-funded by an institution, interstate intercollegiate athletic association, or conference;
   (v) career counseling, job placement services, and other guidance available to all students at an institution;
   (vi) payment of hourly wages and benefits for work actually performed (and not for participation in intercollegiate athletics) at a rate commensurate with the going rate in the locality of an institution for similar work;
   (vii) any program to connect student athletes with employers and facilitate
employment opportunities, if—

(I) the financial terms of such employment opportunities are consistent with the terms offered to similarly situated employees who are not student athletes; and

(II) such program is not used to induce a student athlete to attend a particular institution; or

(viii) payment of an amount not to exceed the academic stipend provided to any student athlete enrolled at an institution during the entire season of competition of a varsity sport team.

(3) CONFERENCE.—The term “conference” means an organization or association that—

(A) exclusively has as members 2 or more institutions; and

(B) arranges championships and sets rules for intercollegiate athletic competition.

(4) COST OF ATTENDANCE.—The term “cost of attendance”—

(A) has the meaning given the term in section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087ll); and

(B) shall be calculated by the financial aid office of an institution applying the same standards, policies, and procedures for all students.

(5) GRANT-IN-AID.—The term “grant-in-aid” means—

(A) means a scholarship, grant, stipend, or other form of financial assistance, including the provision of tuition, room, board, books, or funds for fees or personal expenses, that—

(i) is paid or provided by an institution to a student for the student’s undergraduate or graduate course of study; and

(ii) is in an amount that does not exceed the cost of attendance for such student at the institution; and

(B) does not include compensation paid to an individual who is a student athlete or a former student athlete.

(6) IMAGE.—With respect to a student athlete, the term “image” means a picture or a video that identifies, is linked to, or is reasonably linked to the student athlete.

(7) INSTITUTION.—The term “institution of higher education” or “institution” has the meaning given the term under section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

[(7) INSTITUTIONAL AFFILIATE.—The term “institutional affiliate,” with respect to any institution, shall mean any person, corporation, booster organization, tax-exempt organization, or other entity that provides donations or other support (other than an immediate family member of an individual student athlete, and other than persons and entities that license trademark rights of the institution and do not license NIL rights of student-athletes or make payments earmarked or designated to fund NIL license or other payments to student athletes) directly or indirectly to or for the benefit or support of any

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student athlete enrolled or who may enroll at the institution, or to or for the benefit or
support of the intercollegiate athletics program or any booster organization of the
institution.]

(8) INTERCOLLEGIATE SPORT.—The term “intercollegiate sport”—

(A) means a sport played between institutions for which eligibility requirements for
participation by a student athlete are established by an interstate intercollegiate athletic
association; and

(B) does not include a recreational, intramural, or club sport.

(9) INTERSTATE INTERCOLLEGIATE ATHLETIC ASSOCIATION.—The term “interstate
intercollegiate athletic association” means—

(A) a not-for-profit corporation, an association, or any other group organized in the
United States that—

(i) sponsors or arranges intercollegiate athletic competition between institutions
and conferences;

(ii) sets common rules, standards, procedures, or guidelines for the
administration of intercollegiate athletic competition at institutions; and

(iii) is composed of 2 or more institutions or conferences that are located in
different States; and

(B) does not include a corporation, association, or other group affiliated with
professional athletic competition.

(10) LIKENESS.—With respect to a student athlete, the term “likeness” means a physical
or digital depiction or representation that identifies, is linked to, or is reasonably linked to
the student athlete.

(11) NAME.—With respect to a student athlete, the term “name” means the first or last
name, or the nickname, of the student athlete when used in a context that identifies, is
linked to, or is reasonably linked to the student athlete.

(12) NAME, IMAGE, AND LIKENESS AGREEMENT.—The term “name, image, and likeness
agreement” means a contract or similar agreement between a student athlete and a third
party regarding the commercial use of the name, image, or likeness of the student athlete.

(13) NAME, IMAGE, AND LIKENESS RIGHTS.—The term “name, image, and likeness rights”
means rights recognized under Federal or State law that allow an individual to control and
profit from the commercial use of his or her name, image, likeness, and persona, including
all rights commonly referred to as “publicity rights”.

(14) STUDENT ATHLETE.—The term “student athlete” means a student who—

(A) is enrolled at an institution; and

(B) participates in varsity sports or competes for a varsity sports team.

(15) THIRD PARTY.—The term “third party”—

(A) means any individual or entity that licenses publicity rights from any current or
prospective student athlete or group of athletes; and
(B) does not include an institution, [institutional affiliate,] conference, or interstate intercollegiate athletic association.

(16) THIRD PARTY REPRESENTATION.—The term “third party representation”—

(A) means representation of a student athlete by a third party with respect to a name, image, and likeness agreement; and

(B) does not include such representation by an immediate family member of the student athlete.

(17) VARSITY SPORTS TEAM.—The term “varsity sports team” means a sports team composed of student athletes that is organized by an institution for the purpose of intercollegiate athletic competition.

SEC. 3. PROTECTION OF NAME, IMAGE, AND LIKENESS RIGHTS OF STUDENT ATHLETES.

(a) Right To Enter Into Name, Image, and Likeness Agreements.—

(1) IN GENERAL.—Except as provided in paragraph (2), an institution, interstate intercollegiate athletic association, or conference shall not restrict the ability of a student athlete to enter into a name, image, and likeness agreement.

(2) EXCEPTIONS.—An institution, interstate intercollegiate athletic association, or conference may restrict the eligibility for intercollegiate athletics competition of a student athlete who enters into a name, image, and likeness agreement that violates the code of student conduct, reasonably impacts the reputation or public image, or conflicts with the terms of an existing contract or agreement, of the institution at which the student athlete is enrolled.

(3) DISCLOSURE.—

(A) IN GENERAL.— [30 days] after a student athlete enters into a name, image, and likeness agreement, the student athlete shall disclose the terms of the agreement to the institution at which the student athlete is enrolled.

(B) RELEASE OF INFORMATION.—Except as provided in section 6, an institution may not release any information provided by a student athlete in a disclosure under subparagraph (A) without the express written consent of the student athlete or the student athlete’s third party representative.

(b) Right to Representation.—An institution, interstate intercollegiate athletic association, or conference may not prohibit the participation of a student athlete in intercollegiate athletic competition, or other events relating to intercollegiate athletic competition, based on the student athlete having obtained third party representation.

(c) Amending Consumer Review Fairness Act of 2016 to Include NIL Agreements.—Section 2 of the Consumer Review Fairness Act of 2016 (15 U.S.C. 45b) is amended—

(1) in subsection (a), by adding at the end the following new paragraph:

“(5) NAME, IMAGE, AND LIKENESS AGREEMENT.—The term ‘name, image, and likeness agreement’ has the meaning given that term in section 2 of the [______ Act of 2023].”;

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(2) by inserting after subsection (i) the following new subsection:

“(j) Requirements for Name, Image, and Likeness Agreements.—A name, image, and likeness agreement is void from the inception of such agreement if such agreement does not satisfy the following requirements:

“(1) The agreement is in writing.

“(2) The agreement contains—

“(A) a description of services rendered;

“(B) the names of the parties;

“(C) the term of the agreement;

“(D) the amount of compensation to be provided to the student athlete under the agreement; and

“(E) a provision specifying under what other circumstances or in what other events the agreement may be terminated on account of non-performance of obligations by the student athlete.”;

(3) in subsection (c), by striking “subsection (b)” and inserting “subsection (b) or (j)”

(4) in subsection (d)—

(A) in paragraph (2)(A), by striking “The Commission” and inserting “Except as provided in subparagraph (C), the Commission”; and

(B) by adding at the end the following new subparagraph:

“(C) SCOPE OF JURISDICTION.—Notwithstanding section 4, 5(a)(2), or 6 of the Federal Trade Commission Act, or any other jurisdictional limitation of the Commission, the Commission shall enforce subsection (c), to the extent it relates to subsection (j), in the manner provided in subparagraphs (A) and (B), with respect to organizations not organized to carry on business for their own profit or that of their members.”;

(5) in subsection (i)—

(A) in paragraph (1)—

(i) by inserting “(except to the extent subsection (c) relates to subsection (j))” after “and (c)”; and

(ii) by striking “; and” and inserting a semicolon;

(B) in paragraph (2), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following new paragraph:

“(3) subsections (j) and (c) (to the extent subsection (c) relates to subsection (j)) shall apply with respect to name, image, and likeness agreements in effect on or after the date that is [SLC: insert effective date].”.

SEC. 4. MODIFICATIONS TO SPORTS AGENT
RESPONSIBILITY AND TRUST ACT.

The Sports Agent Responsibility and Trust Act (15 U.S.C. 7801 et seq.) is amended—

(1) in section 3(b)(3) (15 U.S.C. 7802(b)(3)), by striking “Warning to Student Athlete: If you agree orally or in writing to be represented by an agent now or in the future you may lose your eligibility to compete as a student athlete in your sport.”; and

(2) by adding at the end the following:

“SEC. 9. DISCLOSURE AND CONSENT RELATING TO NAME, IMAGE, AND LIKENESS AGREEMENTS.

“(a) In General.—An athlete agent who assists a student athlete with an endorsement contract shall disclose to the student athlete whether the athlete agent—

“(1) is registered with an interstate intercollegiate athletic association (as defined in section 2 of the [______ Act of 2023]); and

“(2) is registered by an interstate intercollegiate athletic association but not by the interstate intercollegiate athletic association of which the institution of higher education at which the student athlete is enrolled is a member.

“(b) Consent.—In the case of an athlete agent that is not registered with an interstate intercollegiate athletic association, the athlete agent may only assist a student athlete with an endorsement contract if the student athlete (or, in the case of a student athlete who is under 18 years of age, the parent or guardian of the student athlete) provides to the athlete agent written consent for such assistance after receiving written disclosure that the athlete agent is not registered.”

SEC. 5. ROLES OF INTERSTATE INTERCOLLEGIATE ATHLETIC ASSOCIATIONS AND CONFERENCES.

An interstate intercollegiate athletic association or conference may—

(1) establish a process by which a third party seeking to represent a student athlete in a name, image, and likeness agreement may register with the interstate intercollegiate athletic association as an agent of the student athlete;

(2) establish and maintain a publicly accessible, searchable database for student athletes and their agents to estimate the fair market value for name, image, and likeness agreements based on the information disclosed under section 6;

(3) establish and enforce rules relating to—

(A) [manner and time periods for] the recruitment of student athletes before and during their eligibility for intercollegiate athletic competition;

(B) [prohibiting or limiting compensation to student athletes by institutions, institutional affiliates, and conferences for the purposes of recruitment or inducing a student athlete to transfer institutions;] and

(B) the transfer of student athletes between member institutions;
(4) provide student athletes and the parents and guardians of student athletes with educational materials relating to name, image, and likeness rights;
(5) organize championships for intercollegiate athletic competitions; and
(6) establish bylaws governing membership, under which an interstate intercollegiate athletic association or conference may—
   (A) remove member institutions;
   (B) restrict participation in competition for institutions or student athletes; and
   (C) restrict eligibility of student athletes for intercollegiate athletic competition.

SEC. 6. DETERMINATION OF MARKET VALUE FOR STUDENT ATHLETE NAME, IMAGE, AND LIKENESS.

(a) Disclosure Requirements.—
   (1) IN GENERAL.—Not later than July 1 of the first year beginning after the date of the enactment of this Act, and each July 1 thereafter, each institution shall disclose to the interstate intercollegiate athletic association of which the institution is a member, in an anonymized manner, the following data with respect to each name, image, and likeness agreement disclosed to the institution under section 3(a)(3):
      (A) A description of services rendered.
      (B) The amount of compensation to be provided to the student athlete under the agreement.
   (2) PROTECTION OF PERSONALLY IDENTIFIABLE INFORMATION.—In making a disclosure under paragraph (1), an institution shall ensure that no personally identifiable information of a student athlete is transmitted to an interstate intercollegiate athletic association.

(b) Database.—
   (1) IN GENERAL.—An interstate intercollegiate athletic association shall use the anonymized data provided by member institutions under subsection (a) to establish and maintain a publicly accessible, searchable database for student athletes and their agents to estimate the fair market value for name, image, and likeness agreements.
   (2) PRIVACY.—An interstate intercollegiate athletic association shall take reasonable technical measures to ensure that information available in the database described in paragraph (1) may not be used to identify a student athlete.

SEC. 7. LIMITATION ON LIABILITY.

An institution, interstate intercollegiate athletic association, or conference that complies with this Act and the amendments made by this Act shall not be in violation of any law or regulation, and shall not be subject to liability under Federal or State law for—
   (1) the adoption of, agreement to, enforcement of, or compliance with any rule or bylaw of an interstate intercollegiate athletic association, conference, or institution that limits or prohibits a student athlete from receiving compensation from an interstate intercollegiate
athletic association, conference, institution, or other person or entity;

(2) restricting the eligibility for intercollegiate athletics of a student athlete who violates a rule of the institution, interstate intercollegiate athletic association, or conference; or

(3) complying with an agreement, understanding, rule, or bylaw adopted by an institution, conference, or association (or a combination of conferences or institutions) that is reasonably contemplated under this Act.

SEC. 8. PREEMPTION.

(a) In General.—No State or political subdivision of a State may adopt, maintain, enforce, or continue in effect any law, regulation, rule, requirement, or standard that—

(1) conflicts with this Act; or

(2) governs or regulates the compensation, employment status, or eligibility for intercollegiate athletic competition of a student athlete or prospective student athlete, including any provision that governs or regulates the commercial use of the name, image, or likeness of a student athlete or prospective student athlete.

(b) Student Athletes Not Employees.—Notwithstanding any other provision of Federal or State law, a student athlete shall not be considered an employee of an institution, conference, or interstate intercollegiate athletic association for purposes of (or as a basis for imposing liability on or awarding damages or other monetary relief under) any Federal or State law based on the student athlete’s participation in, or status as a member of, any varsity sports team.