

COLLEGE ATHLETE COMPENSATION

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House Bill 5217 (H-2) as referred to second committee
Sponsor: Rep. Brandt Iden

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5218 as referred to second committee
Sponsor: Rep. Joe Tate

1st Committee: Oversight
2nd Committee: Ways and Means
Complete to 3-12-20

BRIEF SUMMARY: House Bill 5217 would allow college athletes to earn compensation for the use of their names, images, likenesses, or athletic reputation. House Bill 5218 would repeal provisions in two acts that House Bill 5217 would render moot.

FISCAL IMPACT: The bills would have a negligible fiscal impact on community colleges and universities and could decrease costs and/or revenues for local units of government. (See **Fiscal Information**, below, for a detailed discussion.)

THE APPARENT PROBLEM:

A college student who is great at math or who plays an instrument in the marching band or orchestra of a college or university may use that fact to highlight his or her skills when seeking a job as a math tutor or to teach music lessons. However, a college athlete looking to make extra money by offering private lessons in his or her sport is prohibited under National Collegiate Athletic Association (NCAA) rules and regulations, by which member colleges and universities voluntarily agree to abide. The same regulations prohibit individual athletes from receiving many forms of compensation, gifts, transportation, or entering into contracts to promote goods or services. Noncompliance can lead to sanctions levied against the athlete's school by the NCAA. In addition, state law makes it a criminal offense for athlete agents to engage in certain conduct regarding a student athlete. A booster or other person may be sued by a college or university if the person's actions result in the institution's being harmed; a player's suspension, forfeiture of games, or the loss of eligibility to participate in postseason tournaments or bowls would be examples of harm.

To some, this system is antiquated and unfair. Colleges and universities, especially upper-tier sports programs such as basketball and football, have the potential to generate millions and even billions of dollars a year in revenue for their institutions. The student athlete, by comparison, who spends a great deal of time training, practicing, and traveling to events, cannot even accept a token honorarium or small fee for signing an autograph. Legislation has been offered to remove restrictions placed on college athletes regarding use of their own name, image, and likeness.

THE CONTENT OF THE BILLS:

House Bill 5217 would create a new act to prohibit certain actions by a *postsecondary educational institution* and an athletic association or conference.

Postsecondary educational institution would mean a public or private institution in Michigan that offers a degree or course of study beyond the twelfth grade and receives state or federal funding of any kind. [As the term is defined, the bill would not apply to Hillsdale College.]

Colleges and universities

A postsecondary educational institution would be prohibited from upholding any rule, requirement, standard, or other limitation that prevents a student of the institution from fully participating in intercollegiate athletics and earning compensation as a result of the use of the student's name, image, likeness rights, or athletic reputation. A student's scholarship eligibility or renewal could not be affected by his or her earning such compensation.

An athletics grant-in-aid or a stipend scholarship from an institution in which a student was enrolled would not constitute compensation for use of the student's name, image, likeness rights, or athletic reputation, and the institution could not revoke or reduce such aid or scholarship as a result of the student's earning compensation under the bill.

Athletic associations or conferences

An athletic association, conference, or other group or organization with authority over intercollegiate athletics (this would include, among others, the NCAA) could not do either of the following:

- Prevent a student of an institution from fully participating in intercollegiate athletics and earning compensation as a result of the student's use of his or her name, image, likeness rights, or athletic reputation.
- Prevent an institution from fully participating in intercollegiate athletics without penalty as a result of:
 - A student's use of his or her name, image, likeness rights, or athletic reputation.
 - A college athlete's obtaining professional representation in relation to contracts or legal matters, including representation provided by an athlete agent or financial advisor or legal representation provided by an attorney, each of whom would be required to be licensed by the state of Michigan.

College athletes

A college athlete could not enter into an apparel contract providing compensation to the athlete for use of his or her name, image, or likeness rights that requires the athlete to display a sponsor's apparel, or otherwise advertise for a sponsor, during official team activities if the provision is in conflict with a provision of the athlete's team contract. An institution asserting such a conflict would have to disclose to the athlete and his or her legal representation, if applicable, the full contract that the institution asserts is in conflict. In

addition, a team contract of an institution's athletic program could not prevent a college athlete from receiving compensation for using his or her name, image, or likeness rights for a commercial purpose when he or she is not engaged in official team activities.

Further, a student could not be interfered with or prevented from fully participating in intercollegiate athletics by a postsecondary institution or an athletic association or conference as a result of his or her obtaining representation in relation to contracts or legal matters, including representation provided by an athlete agent or financial advisor or legal representation provided by an attorney, each of whom would be required to be licensed by the state of Michigan.

Miscellaneous provisions

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

A legal settlement arising under the bill would not permit noncompliance with the bill.

The bill would take effect December 31, 2021.

House Bill 5218 would repeal statutory provisions in two acts that would be rendered moot by provisions of House Bill 5217:

Section 411e of the Michigan Penal Code (MCL 750.411e) prohibits certain conduct on the part of an athlete agent and establishes criminal penalties for a violation. Currently, an athlete agent may not:

- Induce a student athlete to enter into an agent contract or professional sport services contract before the student athlete's eligibility for collegiate athletics expires.
- Enter into an agreement whereby the athlete agent gives, offers, or promises anything of value to an employee of an institution of higher education in return for the referral of a student athlete by that employee.

Section 2968 of the Revised Judicature Act (MCL 600.2968) allows colleges and universities to bring a civil action against a person who gives or promises to give improper gifts or services to a student athlete, a prospective student athlete, or his or her immediate family if the action results in an injury to the college or university.

The bill is tie-barred to HB 5217, meaning that it could not take effect unless HB 5217 were also enacted.

FISCAL INFORMATION:

House Bill 5217 would have no fiscal impact on community colleges and universities. The bill states that postsecondary institutions cannot provide financial incentives to college athletes to attend the institution based on the newly granted name, image, or likeness rights. There may be some internal administrative costs to comply with the rules established in the bill, but these costs should be negligible.

House Bill 5218 would have a negligible fiscal impact on community colleges and universities with athletic departments. Since the bill repeals the financial penalties if someone is found responsible for violating the terms found in section 2968 of the Revised Judicature Act, community colleges and universities would no longer receive the penalties listed or recovered attorney fees and costs of litigation. This potential loss would be negligible.

The bill could also result in decreased costs for local units of government related to county jails and local misdemeanor probation supervision. Costs of local incarceration in county jails and local misdemeanor probation supervision vary by jurisdiction. The decrease in costs for locals would depend on the number of individuals who would no longer be charged under provisions of section 411e of the Michigan Penal Code. There could also be a decrease in penal fine revenues which would decrease funding for local libraries, the constitutionally designated recipients of those revenues.

ARGUMENTS:

For:

House Bill 5217 is not a “pay to play” bill; student athletes would not be receiving wages for participating in a sport. The issue it would address is whether a student athlete should have the right to receive compensation from third parties for the use of his or her name, image, and/or likeness.

Not all college athletes receive scholarships or stipends generous enough to make ends meet and may need to seek outside employment. Meanwhile, the athletes add value, and possibly revenue, to the institutions they represent. However, under NCAA regulations, a student athlete and even his or her school may be sanctioned for something as minor as posting flyers offering private coaching if, to document his or her qualifications, the athlete mentions membership on a particular sports team. Even accepting a meal or a ride from an agent or sports booster can trigger sanctions.

To many, restrictions imposed by the NCAA and/or state laws on student athletes’ profiting from their own names, images, or likenesses are archaic and unfair. Doing a commercial for a toothpaste, charging for speaking events, or signing autographs does not necessarily tarnish the spirit of amateur competition or interfere with playing college sports.

A person’s name, image, and likeness belong to the individual, and the individual should be able to explore opportunities to benefit from his or her skill and achievements. This is especially true for those in sports with a high risk for injury. Some opt to leave college early rather than risk an injury that could end dreams of being able to play professionally and the opportunity to benefit financially from their name, image, or likeness. The ability to earn some money through sponsorships while in college may lessen the draw of going pro and may result in more student athletes staying in college to finish their degrees. Further, few college athletes transition to a professional career, and even professional careers are cut short by injuries. Capitalizing on their name, image, or likeness while in

college may be the only chance for some to earn money based on their athletic achievements.

For:

House Bill 5218 would repeal the criminal penalties imposed on athlete agents and the statutory authority for an institution to sue any person whose conduct causes harm to the institution. Both of these provisions would be rendered moot if HB 5217 were enacted. Reportedly, laws prohibiting certain conduct on the part of athlete athletes can be difficult to prove and expensive to prosecute, and few cases nationally have been successfully prosecuted. Colleges and universities should still have some recourse from egregious behavior, as the common law principle of interference with prospective advantage should still allow an institution to sue a person deemed to have caused it harm. That principle would just no longer be codified in these provisions.

Against:

Certainly, rules and regulations regarding if, and in what manner, a college athlete should be able to profit financially from his or her own name, image, or likeness should be reviewed to see what makes sense today. However, due to the nature of collegiate competition, the discussion and solutions need to be on the national, not state, level. A patchwork of state laws would complicate matters and make it difficult for all involved—student athletes, families, agents, institutions—especially when recruiting, transfers, agents, etc., cross state lines.

In addition to conflicting with existing NCAA rules and regulations (which could trigger sanctions against the athlete and/or the institution), the bills bring up many legal issues regarding potential conflicts with worker compensation laws, Title IX, and federal and state student financial aid programs, among others. In addition, would self-marketing by college athletes, especially in higher tier programs, negatively impact team morale? Interfere with team dynamics and cohesiveness? Would the bills lead to the focus centering on making a name for oneself, rather than the program, and take away the primary reason for being at college—to get a college education? Many student athletes receive a full or partial scholarship and stipend to help with basic living expenses to compensate for the time spent participating in their sport, and some argue that education and team participation, not advancing individual celebrity, should be the focus of college athletes.

Further, there are reasons why the NCAA and many states have adopted rules, regulations, and laws regarding student athletes profiting financially during their college years. Young adults, and even their families, may not recognize unscrupulous agents and scam artists who do not have the student athlete's best interests at heart. Many of the laws and regulations in place today are meant to provide protection from exploitation and corruption for the student athlete and the institution. Whether any of those rules and regulations should be relaxed, and in which situations, would require an in-depth examination to see where a modification would be warranted. Such discussions are already beginning at the national level between upper tier institutions and the NCAA. A reasonable amount of time should be given to these discussions before legislation moves at the state level.

POSITIONS:

A representative of the Michigan Association of State Universities testified in opposition to the bills. (1-23-20)

Michigan State University indicated concerns with the bills. (1-23-20)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.