

ALLOW COLLEGE ATHLETES TO RECEIVE CERTAIN COMPENSATION

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House Bill 5217 as introduced
Sponsor: Rep. Brandt Iden

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

House Bill 5218 as introduced
Sponsor: Rep. Joe Tate

Committee: Oversight
Complete to 1-22-20

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 a section of law that makes it a criminal offense for an athlete agent to contract with a college athlete and another section that allows a college to sue a person who gives or promises gifts or services to a college athlete or prospective college athlete if the college suffers harm. The bills are described in detail below.

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 offering a degree or course of study beyond the twelfth grade.

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 National Collegiate Athletic Association (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 July 1, 2020.

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 become law unless HB 5217 were also enacted.

FISCAL IMPACT:

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.

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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.