



Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 5217 (Substitute H-5 as passed by the House)

House Bill 5218 (as passed by the House)

Sponsor: Representative Brandt Iden (H.B. 5217)

Representative Joe Tate (H.B. 5218)

House Committee: Oversight

Ways and Means

Senate Committee: Regulatory Reform

Date Completed: 9-29-20

CONTENT

House Bill 5217 (H-5) would create a new act to do the following:

- **Prohibit a postsecondary institution from preventing a student of that institution from fully participating in intercollegiate athletics based upon the student earning compensation as a result of the student's use of his or her name, image, or likeness rights.**
- **Specify that earning compensation from the use of a student's name, image, or likeness rights could not affect the student's scholarship eligibility or renewal.**
- **Prohibit an athletic association, conference, or other group or organization with authority over intercollegiate athletics from preventing a student or a postsecondary institution from fully participating in intercollegiate athletics based on the student earning compensation from the use of his or her name, image, or likeness rights.**
- **Prohibit a postsecondary educational institution, athletic association, conference, or other group or organization with authority over intercollegiate athletics from providing a prospective college athlete with compensation in relation to the athlete's name, image, or likeness rights, and from preventing a student athlete from obtaining professional representation in relation to contracts or legal matters.**
- **Specify that an athletics grant-in aid or stipend scholarship would not be compensation for use of a student's name, image, or likeness rights, and prohibit a postsecondary educational institution from revoking or reducing an athletics grant-in aid or stipend scholarship upon a student earning compensation in accordance with the Act.**
- **Prohibit a student athlete from entering into an apparel contract providing compensation for the use of the student's name, image, or likeness rights that required the student to display a sponsor's apparel or otherwise advertise for a sponsor during official team activities if it would conflict with a provision of the student's postsecondary educational institution's team contract.**
- **Require a student athlete who intended to enter into an opportunity or contract providing compensation for the use of his or her name, image, or likeness rights to disclose the proposed opportunity or contract to the institution he or she attended at least seven days before committing to the opportunity or contract.**

- **Prohibit a team contract of a postsecondary educational institution's athletic program from preventing a student from receiving compensation for using his or her name, image, or likeness rights for a commercial purpose when the student was not engaged in official team activities.**
- **Require any nonprofit trade association that represented postsecondary educational institutions in Michigan to provide certain reports to the Legislature.**
- **Specify that the Act would not prohibit a postsecondary educational institution from establishing and enforcing athletic standards and requirements of its student athletes, team rules or conduct, standards or policies for the participation in intercollegiate varsity athletics, and disciplinary rules applicable to all student athletes at the institution.**

House Bill 5218 would repeal Section 411e of the Michigan Penal Code, which prohibits athletic agents from engaging in certain conduct, and Section 2968 of the Revised Judicature Act, which prohibits promising or providing improper gifts or services to a student athlete or his or her family.

House Bill 5218 is tie-barred to House Bill 5217. Sections 9 (which relates to the reports required to various House and Senate committees) and 11 of the proposed Act would take effect on the date House Bill 5217 was enacted. Sections 1 through 8 and 10 of the proposed Act would take effect on December 31, 2022.

House Bill 5217 (H-5)

Compensation for Name, Image, & Likeness

The bill would prohibit a postsecondary educational institution from upholding any rule, requirement, standard, or other limitation that prevented a student of that institution from fully participating in intercollegiate athletics based upon the student earning compensation as a result of the use of his or her name, image, or likeness rights. Earning compensation from the use of a student's name, image, or likeness rights could not affect a student's scholarship eligibility or renewal.

"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.

An athletic association, conference, or other group or organization with authority over intercollegiate athletics, including the National Collegiate Athletic Association (NCAA), could not do either of the following:

- Prevent a student of a postsecondary educational institution from fully participating in intercollegiate athletics based upon the student earning compensation as a result of the student's use of his or her name, image, or likeness rights.
- Prevent a postsecondary educational institution from fully participating in intercollegiate athletics without penalty based upon a student's use of his or her name, image, or likeness rights.

A postsecondary educational institution, athletic association, conference, or other group or organization with authority over intercollegiate athletics could not do either of the following:

- Provide a prospective college athlete who would attend a postsecondary educational institution with compensation in relation to the athlete's name, image, or likeness rights.

- Prevent a student who resided in the State and participated in intercollegiate athletics from obtaining professional representation in relation to contracts or legal matters regarding opportunities to be compensated for use of the student's name, image, or likeness rights, including representation provided by an athlete agent or legal representation provided by an attorney.

An athletics grant-in aid or stipend scholarship from a postsecondary educational institution in which a student was enrolled would not be compensation for use of a student's name, image, or likeness rights, and the institution could not revoke or reduce an athletics grant-in aid or stipend scholarship based upon a student earning compensation in accordance with the Act.

Participation in Intercollegiate Athletics

The bill would prohibit a postsecondary educational institution, athletic association, conference, or other group or organization with authority over intercollegiate athletics from interfering with or preventing a student from fully participating in intercollegiate athletics based upon the student obtaining professional representation in relation to contracts or legal matters regarding the student's opportunities to earn compensation for the student's use of his or her name, image, or likeness rights, 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 intercollegiate athletics, including the National Collegiate Athletic Association, could not prevent a postsecondary educational institution from fully participating in intercollegiate athletics without penalty as a result of a student obtaining professional representation in relation to contracts or legal matters regarding the student's opportunities to earn compensation for the student's use of his or her name, image, or likeness rights, including representation provided by an athlete agent or financial advisor, or legal representation by an attorney.

For purposes of the provisions described above, professional representation by an athlete agent, financial advisor, or attorney would have to be provided by people licensed in the State, as applicable.

Student Athlete Contracts

Under the bill, a student could not enter into an apparel contract providing compensation to the student for use of his or her name, image, or likeness rights that required the student to display a sponsor's apparel, or otherwise advertise for a sponsor, during official team activities if the provision was in conflict with a provision of the student's postsecondary educational institution's team contract.

A student who intended to enter into a verbal or written opportunity or contract that would provide compensation to the student for use of his or her name, image, or likeness rights would have to disclose the proposed opportunity or contract to a designated official of the postsecondary educational institution that the student attended, as designated by that institution, at least seven days before committing to the opportunity or contract, for review by that institution.

If the postsecondary educational institution identified a conflict between the student's proposed opportunity or contract and any existing agreements of the postsecondary educational institution and communicated that conflict to the student, he or she could not enter into the opportunity or contract, but could negotiate a revision of the opportunity or

contract so that the conflict was avoided, subject to additional review and approval by the postsecondary educational institution in accordance with this provision.

A team contract of a postsecondary educational institution's athletic program could not prevent a student from receiving compensation for using his or her name, image, or likeness rights for a commercial purpose when the student was not engaged in official team activities.

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

Report to the Legislature

Under the bill, by December 31, 2020, and by December 31, 2021, any nonprofit trade association that represented postsecondary educational institutions in the State would have to provide for each of those years, respectively, a written summary of both of the following to the chairs of the appropriations committees of the Michigan Senate and the House of Representatives, and to the chair of the House Ways and Means Committee:

- Progress made by the NCAA toward the development of a national policy, including updates to relevant bylaws and rules, on student athlete name, image, and likeness compensation, as directed by NCAA's Board of governors on October 29, 2019.
- Congressional action on legislation on student athlete name, image, and likeness compensation, including the proposed Congressional Advisory Commission on Intercollegiate Athletics Act.

By June 30, 2022, any nonprofit trade association that represented postsecondary educational institutions in the State would have to provide to the chairs of the Senate and House appropriations committees, and to the chair of the House Ways and Means Committee a written summary of the preparedness of the NCAA's respective member institutions toward implementation of the Act.

Other Provisions

A legal settlement arising under the Act could not permit noncompliance with the Act.

The Act would not require a postsecondary educational institution, athletic association, conference, or other group or organization with authority over intercollegiate athletics to identify, create, facilitate, negotiate, or otherwise enable opportunities for a student to earn compensation for the student's use of his or her 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, or symbols, whether registered or not, of a postsecondary educational institution, athletic association, conference, or other group or organization with authority over intercollegiate athletics, in furtherance of the student's opportunities to earn compensation for the student's use of his or her name, image, or likeness rights.

The Act would not limit the right of a postsecondary educational institution 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 intercollegiate varsity athletics.

- Disciplinary rules and standards generally applicable to all students of the postsecondary educational institution.

House Bill 5218

Section 411e of the Michigan Penal Code prohibits an athletic agent from doing either of the following:

- Inducing a student athlete to enter into an agent contract or professional sport services contract before the student athlete's eligibility for collegiate athletics expires.
- Entering 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.

An athlete agent who violates Section 411e is guilty of a misdemeanor, punishable by a maximum fine of \$50,000, or an amount equal to three times the amount given, offered, or promised as an inducement or three times the value of the agreement entered into as, whichever is greater, or imprisonment for up to one year, or both.

The bill would repeal Section 411e.

Under Section 2968 of the Revised Judicature Act, if a person interferes with the prospective advantage accorded an institution of higher education by virtue of its relationship with an intercollegiate athletics governing organization by promising or providing any improper gift or service to a student athlete, a prospective student athlete, or the immediate family of a student athlete or of a prospective student athlete, and if that interference results in an injury to the institution, the person who engaged in the interference is liable to the institution for \$10,000 or the actual damages incurred, whichever is higher. In addition, the institution may recover actual attorney fees and actual costs incurred in bringing the action.

The bill would repeal Section 2968.

MCL 750.411e & 600.2968 (H.B. 5218)

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

House Bill 5217 (H-5)

The bill would have no fiscal impact on State or local government.

House Bill 5218

The bill could result in lower costs for State government in that the elimination of the penalty under the Michigan Penal Code could result in decreased costs related to county jails and local probation supervision. The amount of any savings is indeterminate and would depend on the actual number of individuals that would have been penalized under those provisions that would be eliminated. Additionally, the bill could result in decreased funding for local libraries from the elimination of the provision from the Code.

Fiscal Analyst: Joe Carrasco
Josh Sefton

SAS\S1920\s5217sa

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.