

Senate Bill 5

Sponsored by Senators COURTNEY, MANNING JR

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Permits students participating in intercollegiate sports to earn compensation for use of name, image or likeness and to retain professional representation or athlete agent. Prohibits student from entering contract for use of name, image or likeness that conflicts with team rules or contract between post-secondary institution of education and third party, except that team rules and contract between post-secondary institution of education and third party may not prevent student from earning compensation for use of name, image or likeness when not engaged in official team activities or from use of social media when engaged in official team activities.

Prohibits student athlete from retaining professional representative or athlete agent who represented post-secondary institution of education at any time in preceding four years.

Requires merchandising agreement that covers intercollegiate sports team that includes royalty payments to also include royalty payments to current members of team and royalty payments plus premium to current or former member of team whose name, image or likeness is used.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to student athletes; creating new provisions; amending ORS 702.005, 702.027 and 702.047;
3 and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

SECTION 1. (1) As used in this section:

5 (a) **"Post-secondary institution of education" does not include a community college.**

6 (b) **"Social media" means an electronic medium that allows users to create, share and**
7 **view user-generated content, including, but not limited to, uploading or downloading videos,**
8 **still photographs, blogs, video blogs, podcasts, instant messages, electronic mail or Internet**
9 **website profiles or locations.**

10 (c)(A) **"Student's rights" means the rights of a student enrolled in a post-secondary in-**
11 **stitution of education to earn compensation for use of the student's name, image or likeness**
12 **and to contract with and retain professional representation or an athlete agent.**

13 (B) **"Student's rights" does not include a right to receive compensation from a post-**
14 **secondary institution of education.**

15 (2) **Except as provided in this section, a post-secondary institution of education, athletic**
16 **association, conference or organization with authority over intercollegiate sports may not:**

17 (a) **Prohibit, prevent or restrict a student athlete from exercising the student's rights.**

18 (b) **Penalize or retaliate against a student athlete for exercising the student's rights.**

19 (c) **Prohibit a student athlete from participating in an intercollegiate sport for exercising**
20 **the student's rights.**

21 (d) **Impose an eligibility requirement on a scholarship or grant that requires a student**
22 **athlete to refrain from exercising the student's rights.**

23 (e) **Prohibit a student athlete from receiving food, drink, lodging or medical expenses or**
24 **insurance coverage from a third party.**
25

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (3)(a) A student athlete may not enter into a contract that provides compensation to the
 2 student athlete for use of the student athlete's name, image or likeness if terms of the
 3 contract conflict with the student athlete's team rules or with terms of a contract entered
 4 into between the student athlete's post-secondary institution of education and a third party,
 5 except neither the team rules nor a contract entered into between the post-secondary insti-
 6 tution of education and a third party may prevent a student athlete from earning compen-
 7 sation for use of the student athlete's name, image or likeness:

8 (A) When not engaged in official team activities, including participating in or being part
 9 of an advertisement that was created while not engaged in official team activities but that
 10 may otherwise be broadcasted, displayed or disseminated at any time; or

11 (B) From the use of social media, when engaged in official team activities.

12 (b) A student athlete who enters into a contract that provides compensation to the stu-
 13 dent athlete for use of the student athlete's name, image or likeness shall disclose the con-
 14 tract to an official of the post-secondary institution of education designated by the
 15 institution if the student athlete is a team member or, if the student athlete is not a team
 16 member, at the time the student athlete seeks to become a team member.

17 (c) If the post-secondary institution of education asserts that the terms of the contract
 18 conflict with the team rules or with terms of a contract entered into between the student
 19 athlete's post-secondary institution of education and a third party, the institution shall dis-
 20 close the specific rules or terms asserted to be in conflict to the student athlete or to the
 21 student athlete's professional representative or athlete agent if the student athlete is re-
 22 presented.

23 (4) Except as provided in section 2 of this 2021 Act, a post-secondary institution of edu-
 24 cation, athletic association, conference or organization with authority over intercollegiate
 25 sports may not provide to a prospective or current student athlete compensation for use of
 26 the student athlete's name, image or likeness.

27 (5) A student athlete may not contract with or retain a person as the student athlete's
 28 professional representative or athlete agent, if the person represented a post-secondary in-
 29 stitution of education at any time in the preceding four years.

30 (6) Nothing in this section prohibits a post-secondary institution of education from es-
 31 tablishing or enforcing a conduct code that is applicable to all students enrolled at the in-
 32 stitution.

33 **SECTION 2.** (1) As used in this section, "post-secondary institution of education" does
 34 not include a community college.

35 (2) A post-secondary institution of education, athletic association, conference or organ-
 36 ization with authority over intercollegiate sports that enters into a merchandising agreement
 37 that covers an intercollegiate sports team and that results in royalty payments to the post-
 38 secondary institution of education, athletic association, conference or organization with au-
 39 thority over intercollegiate sports shall include as terms to the agreement:

40 (a) Royalty payments to each student athlete who is a current member of the team.

41 (b) Royalty payments plus a premium to each student athlete who is a current or former
 42 member of the team whose name, image or likeness is used.

43 **SECTION 3.** ORS 702.027 is amended to read:

44 702.027. An athlete agent may not intentionally:

45 (1) Initiate contact with a student athlete or, if the athlete is a minor, a parent or guardian of

1 the athlete unless registered under ORS 702.005 to 702.065, 702.991 and 702.994;

2 (2) Refuse or fail to retain or permit inspection of the records required to be retained by ORS
3 702.059;

4 (3) Fail to register when required by ORS 702.012;

5 (4) Provide materially false or misleading information in an application for registration or re-
6 newal of registration;

7 (5) Predate or postdate a written agency contract; *[or]*

8 (6) Fail to notify a student athlete or, if the athlete is a minor, a parent or guardian of the
9 athlete before the student athlete, parent or guardian enters into an agency contract for a particular
10 sport that entering into the agency contract may make the student athlete ineligible to participate
11 as a student athlete in that sport[.]; **or**

12 **(7) Represent a student athlete who is enrolled in a post-secondary institution of educa-**
13 **tion, if the athlete agent represented a post-secondary institution of education at any time**
14 **in the preceding four years.**

15 **SECTION 4.** ORS 702.005 is amended to read:

16 702.005. As used in ORS 702.005 to 702.065, 702.991 and 702.994 **and sections 1 and 2 of this**
17 **2021 Act:**

18 (1) “Agency contract” means an agreement in which a student athlete authorizes a person to
19 negotiate or solicit on behalf of the student athlete a professional sports services contract or an
20 endorsement contract.

21 (2)(a) “Athlete agent” means an individual who:

22 (A) Directly or indirectly recruits or solicits a student athlete to enter into an agency contract;
23 *or*

24 (B) For compensation, procures employment or offers, promises, attempts or negotiates to obtain
25 employment for a student athlete as a professional athlete or member of a professional sports team
26 or organization;

27 (C) For compensation or in anticipation of compensation related to a student athlete’s partic-
28 ipation in athletics:

29 (i) Serves the athlete in an advisory capacity on a matter related to finances, business pursuits
30 or career management decisions; *or*

31 (ii) Manages the business affairs of the athlete by providing assistance with bills, payments,
32 contracts or taxes;

33 (D) In anticipation of representing a student athlete for a purpose related to the athlete’s par-
34 ticipation in athletics:

35 (i) Gives consideration to the athlete or another person;

36 (ii) Serves the athlete in an advisory capacity on a matter related to finances, business pursuits
37 or career management decisions; *or*

38 (iii) Manages the business affairs of the athlete by providing assistance with bills, payments,
39 contracts or taxes; *or*

40 (E) Is a licensed, registered or certified professional and offers or provides services to a student
41 athlete customarily provided by members of the profession and the individual:

42 (i) Also recruits or solicits the athlete to enter into an agency contract;

43 (ii) Also, for compensation, procures employment or offers, promises, attempts or negotiates to
44 obtain employment for the athlete as a professional athlete or member of a professional sports team
45 or organization; *or*

1 (iii) Receives consideration for providing the services calculated using a different method than
 2 for an individual who is not a student athlete.

3 (b) "Athlete agent" does not include an individual who:

4 (A) Acts solely on behalf of a professional sports team or organization;

5 (B) Is employed by, and acts solely on behalf of, a publicly traded corporation engaged in con-
 6 sumer brand marketing and seeking to negotiate an endorsement contract;

7 (C) Serves a student athlete in an advisory capacity on a matter related to finances, business
 8 pursuits or career management decisions and the individual is an employee of an educational insti-
 9 tution acting exclusively as an employee of the institution for the benefit of the institution; or

10 (D) Is a licensed, registered or certified professional and offers or provides services to a student
 11 athlete customarily provided by members of the profession.

12 (3) "Athletic director" means:

13 (a) An individual responsible for administering the overall athletic program of an educational
 14 institution or, if an educational institution has separately administered athletic programs for male
 15 students and female students, the athletic program for males or the athletic program for females,
 16 as appropriate;

17 (b) If the educational institution is a public or private elementary school or secondary school
 18 and the educational institution does not have a person responsible for administering the overall
 19 athletic program:

20 (A) The principal of the educational institution; or

21 (B) If the educational institution does not have a principal, the person designated by the gov-
 22 erning body of the school district, education service district or charter school to manage the edu-
 23 cational institution; or

24 (c) If the educational institution is a technical or vocational school, community college or uni-
 25 versity and the educational institution does not have a person responsible for administering the
 26 overall athletic program:

27 (A) The president of the educational institution; or

28 (B) If the educational institution does not have a president, the person designated by the gov-
 29 erning body of the educational institution to manage the educational institution.

30 (4) "Contact" means a communication, direct or indirect, between an athlete agent and a student
 31 athlete, to recruit or solicit the student athlete to enter into an agency contract.

32 (5) "Educational institution" means a public or private elementary school, secondary school,
 33 technical or vocational school, community college, university or other educational institution.

34 (6) "Endorsement contract" means an agreement under which a student athlete is employed or
 35 receives consideration to use on behalf of the other party any value that the student athlete may
 36 have because of publicity, reputation, following or fame obtained because of athletic ability or per-
 37 formance.

38 (7) "Enrolled" means registered for courses and attending athletic practice or class.

39 (8) "Intercollegiate sport" means a sport played at the collegiate level for which eligibility re-
 40 quirements for participation by a student athlete are established by a national association that
 41 promotes or regulates collegiate athletics.

42 (9) "Interscholastic sport" means a sport played between educational institutions that are not
 43 community colleges, colleges or universities.

44 (10) "Licensed, registered or certified professional" means an individual who is licensed, regis-
 45 tered or certified as an attorney, dealer in securities, financial planner, insurance agent, real estate

1 broker or sales agent, tax consultant or accountant or a member of a profession, other than that
 2 of athlete agent, who is licensed, registered or certified by the state or a nationally recognized or-
 3 ganization that licenses, registers or certifies members of the profession on the basis of experience,
 4 education or testing.

5 (11) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited
 6 liability company, association, business or nonprofit entity, joint venture, public body, as defined in
 7 ORS 174.109, or any other legal or commercial entity.

8 (12) "Professional sports services contract" means an agreement under which an individual is
 9 employed, or agrees to render services, as a player on a professional sports team, with a professional
 10 sports organization or as a professional athlete.

11 (13) "Record" means information that is inscribed on a tangible medium or that is stored in an
 12 electronic or other medium and is retrievable in perceivable form.

13 (14)(a) "Recruit or solicit" means attempt to influence the choice of an athlete agent by a stu-
 14 dent athlete or, if the athlete is a minor, a parent or guardian of the athlete.

15 (b) "Recruit or solicit" does not include giving advice on the selection of a particular athlete
 16 agent in a family, coaching or social situation unless the individual giving the advice does so be-
 17 cause of the receipt or anticipated receipt of an economic benefit, directly or indirectly, from the
 18 agent.

19 (15) "Registration" means registration as an athlete agent pursuant to ORS 702.005 to 702.065,
 20 702.991 and 702.994.

21 (16) "Sign" means, with present intent to authenticate or adopt a record:

22 (a) To execute or adopt a tangible symbol; or

23 (b) To attach to or logically associate with the record an electronic symbol, sound or process.

24 (17) "State" means a state of the United States, the District of Columbia, Puerto Rico, the
 25 United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the
 26 United States.

27 (18) "Student athlete" means an individual who is eligible to attend an educational institution
 28 who engages in, is eligible to engage in or may be eligible in the future to engage in any inter-
 29 scholastic sport or intercollegiate sport. If an individual is permanently ineligible to participate in
 30 a particular interscholastic sport or intercollegiate sport, the individual is not a student athlete for
 31 purposes of that sport.

32 **SECTION 5.** ORS 702.047 is amended to read:

33 702.047. (1) A written agency contract must be in a record, signed or otherwise authenticated
 34 by the parties.

35 (2) A written agency contract must state or contain:

36 (a) The amount and method of calculating the consideration to be paid by the student athlete
 37 for services to be provided by the athlete agent under the contract and any other consideration the
 38 athlete agent has received or will receive from any other source for entering into the contract or
 39 for providing the services;

40 (b) The name of any person not listed in the application for registration or renewal of registra-
 41 tion who will be compensated because the student athlete or, if the athlete is a minor, the parent
 42 or guardian of the athlete signed the written agency contract;

43 (c) A description of any expenses that the student athlete agrees to reimburse;

44 (d) A description of the services to be provided to the student athlete;

45 (e) The duration of the contract;

1 (f) The date of execution; and

2 (g) A statement that the athlete agent is registered as an athlete agent in this state and a list
3 of any other states in which the agent is registered as an athlete agent.

4 (3) **Except where section 1 of this 2021 Act applies**, a written agency contract must contain,
5 in close proximity to the signature of the student athlete or, if the athlete is a minor, the signature
6 of the parent or guardian of the athlete, a conspicuous notice in boldfaced type in capital letters
7 stating:

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10 **WARNING TO THE STUDENT ATHLETE:**

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12 **IF YOU OR YOUR PARENT OR GUARDIAN SIGNS THIS CONTRACT:**

13 (1) **YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT ATHLETE IN**
14 **YOUR SPORT.**

15 (2) **IF YOU HAVE AN ATHLETIC DIRECTOR, BOTH YOU AND YOUR ATHLETE AGENT**
16 **MUST NOTIFY YOUR ATHLETIC DIRECTOR WITHIN 72 HOURS AFTER ENTERING INTO**
17 **THIS CONTRACT, OR BEFORE YOU PARTICIPATE IN ANY INTERSCHOLASTIC OR**
18 **INTERCOLLEGIATE SPORTS EVENT, WHICHEVER OCCURS FIRST, THAT YOU HAVE EN-**
19 **TERED INTO THIS CONTRACT AND PROVIDE THE NAME AND CONTACT INFORMATION**
20 **OF THE ATHLETE AGENT.**

21 (3) **YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCEL-**
22 **LATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.**

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24
25 (4) A written agency contract that does not conform to this section is voidable by the student
26 athlete or, if the athlete is a minor, the parent or guardian of the athlete. If the contract is voided,
27 any consideration received from the athlete agent under the contract to induce entering into the
28 contract is not required to be returned.

29 (5) The athlete agent shall give a record of the written agency contract to the student athlete
30 or, if the athlete is a minor, to the parent or guardian of the athlete at the time of execution.

31 (6) **Except where section 1 of this 2021 Act applies**, an agency contract must be accompanied
32 by a separate record signed by the student athlete or, if the athlete is a minor, the parent or
33 guardian of the athlete acknowledging that signing the contract may result in the loss of the
34 athlete's eligibility to participate in the athlete's sport.

35 (7) At the time an agency contract is executed, the athlete agent shall give the student athlete
36 or, if the athlete is a minor, the parent or guardian of the athlete a copy in a record of the contract
37 and the separate acknowledgement **as** required by subsection (6) of this section.

38 (8) If a student athlete is a minor, an agency contract must be signed by the parent or guardian
39 of the athlete and the notice required by subsection (3) of this section must be revised accordingly.

40 **SECTION 6. Sections 1 and 2 of this 2021 Act and the amendments to ORS 702.005, 702.027**
41 **and 702.047 by sections 3 to 5 of this 2021 Act apply to contracts or agreements entered into**
42 **or renewed on or after July 1, 2021.**

43 **SECTION 7. This 2021 Act being necessary for the immediate preservation of the public**
44 **peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect**
45 **on its passage.**

