

SENATE BILL REPORT

SB 5875

As Reported by Senate Committee On:
Higher Education & Workforce Development, February 21, 2019

Title: An act relating to unfair practices involving compensation of athletes in higher education.

Brief Description: Concerning unfair practices involving compensation of athletes in higher education.

Sponsors: Senator Palumbo.

Brief History:

Committee Activity: Higher Education & Workforce Development: 2/19/19, 2/21/19 [DPS-WM, DNP].

Brief Summary of First Substitute Bill

- Allows students to receive compensation for services provided, including payment for the use of the student's name, image, or likeness, and be represented by an agent for any purpose.
- Prohibits a collegiate athletic association from retaliating or taking adverse action against a higher education institution for a student filing a cause of action.
- Makes a violation of the prohibition a Consumer Protection Act violation.
- Makes the effective date of the act contingent on states representing at least 15 percent of the U.S. population enacting similar legislation prohibiting a college athletic association from denying a student athlete eligibility as a result of receiving compensation.

SENATE COMMITTEE ON HIGHER EDUCATION & WORKFORCE DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 5875 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Palumbo, Chair; Randall, Vice Chair; Liias and Wellman.

Minority Report: Do not pass.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Signed by Senators Holy, Ranking Member; Brown and Ericksen.

Staff: Alicia Kinne-Clawson (786-7407)

Background: The National Collegiate Athletic Association (NCAA) is a nonprofit organization whose voluntary membership includes colleges, universities, athletic conferences, and other affiliated organizations. The NCAA regulates intercollegiate athletic competitions in various sports across three divisions.

The NCAA issues and enforces rules governing athletic competitions among its member schools. The rules are developed by a member-led governance system in which members introduce and vote on proposed rules. The rules for student-athletes vary by division. In general, the NCAA's amateurism rules prohibit student-athletes from being paid for their athletic abilities, including being paid for commercial endorsements if the reason for being chosen for the commercial endorsement is because of the student's athletic ability. This prohibition includes compensation for the use of a student-athlete's name, image, and likeness in live games, telecast, videogames, and other footage.

Student-athletes are allowed to receive scholarships, or grant-in-aid, that covers tuition and fees, room and board, and required course-related books. However, a student's grant-in-aid may not exceed the cost of attendance at that school. Over the last few years, legal actions alleging the NCAA's rules prohibiting student-athletes from receiving compensation for the use of their names, images, and likenesses are an unlawful restraint of trade and violate antitrust laws. In general, federal and state antitrust laws are intended to promote and foster competition in the marketplace and prevent anticompetitive mergers and business practices.

Consumer Protection Act. Under the state's Consumer Protection Act (CPA), a variety of business practices are declared unlawful. These practices include engaging in unfair methods of competition and unfair or deceptive acts or practices in the conduct of commerce and monopolizing trade or commerce.

A person injured by a violation of the CPA may bring a private cause of action for injunctive relief and the recovery of actual damages and reasonable attorneys' fees. Recovery may also include triple damages, in some circumstances. In addition, the CPA allows the attorney general to bring a CPA action in the name of the state or on behalf of persons residing in the state. An action by the attorney general may seek to prevent or restrain violations of the act and may seek restoration for persons injured by violation of the CPA.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (First Substitute): Collegiate athletic associations are required to allow student athletes to be represented by an agent and to receive compensation for services provided including the use of the student's name, image, or likeness.

A student may bring cause of action against a collegiate athletic association if the collegiate athletic association interferes with the student's right to be represented by an agent or receive compensation.

A higher education institution may bring a cause of action against a collegiate athletic association if the association takes adverse action or retaliates against the higher education institution for a student filing a cause of action against the collegiate association.

A violation of the prohibitions are declared unfair and deceptive acts in trade or commerce and unfair methods of competition for the purposes of the Consumer Protection Act.

The act is effective after states representing at least 15 percent of the U.S. population enact similar legislation prohibiting a college athletic association from denying a student athlete eligibility as a result of receiving compensation. The Office of the Attorney General must provide notice of the effective date of this act.

EFFECT OF CHANGES MADE BY HIGHER EDUCATION & WORKFORCE DEVELOPMENT COMMITTEE (First Substitute):

- Adds effective date contingent on states representing at least 15 percent of the U.S. population enacting similar legislation prohibiting a college athletic association from denying a student athlete eligibility as a result of receiving compensation.
- Requires the Office of the Attorney General to provide notice of the effective data of the act.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Proposed Substitute: *The committee recommended a different version of the bill than what was heard.* PRO: These athletes are in a \$13 billion industry and they are not able to earn any kind of money which is really fundamentally wrong and anti-American. The distinction between amateur and professional has blurred in recent years when applied to college sports. There is far more money in the system than there used to be. The idea of saying college athletes can not participate in the value they create is un-American—or, in our case, un-Washingtonian. The NCAA has evolved in its own rules and their distinction of amateurism is increasingly arbitrary. This year's Heisman trophy winner is an amateur college athlete except that he is also a professional baseball player. The NCAA permits Olympic athletes to compete as college athletes and receive compensation from their home countries. So, the NCAA by their own rules has blurred the lines on what it means to be an amateur. It makes sense that there ought to be national rules governing the NCAA which is the institutions main complaint. But, states have an opportunity to be entrepreneurial here and lead the way. The NCAA is essentially acting as a cartel by price fixing for all participants in an industry. A current case before the ninth circuit is considering this issue. We allow other college students that are not student athletes to commercialize their image and likeness and no one has a problem with it. But when this standard is applied to a college athlete we ask that they wait a few years when they will make plenty of money as a professional. I think more people need access to test

their value on the free market. This is a matter of equity. Many of the college athletes also receive Pell, come from low-income and underrepresented groups, and are prohibited from accessing the free enterprise system that could help life them out of poverty.

CON: The core question is if we want Washington to lead on this and the answer for us is no. This puts us in a really difficult spot and we would rather not be the guinea pig for this national conversation. We believe that this issue should be handled on a national scale by the NCAA. We can not be in a position to encourage our student athletes to violate NCAA rules, that will leave us under a cloud of confusion as to how we are supposed to advise student athletes as this gets litigated. We believe that this brings a national spotlight to our programs and our concerned about sanctions that could be devastating to our programs. This bill would create confusion and challenges for our compliance staff and may put our competitive programs at risk. The university is open to holistic reform and we have been supportive of changes to provide a cost of living stipend for students but we are are opposed to the state leading on what is a national issue.

Persons Testifying: PRO: Senator Guy Palumbo, Prime Sponsor; Drew Stokesbary, Representative, Washington State House; Andrew Schwartz, Antitrust Economist.

CON: Chris Mulick, Washington State University; Terri Standish-Kuon, Independent Colleges of Washington; Morgan Hickel, University of Washington.

Persons Signed In To Testify But Not Testifying: No one.