S-3587.1

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SENATE BILL 5870**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 67th Legislature 2022 Regular Session**

**By** Senators Frockt, Pedersen, and Lovick

AN ACT Relating to the uniform college athlete name, image, or likeness act; amending RCW 42.56.270; adding a new chapter to Title 63 RCW; and prescribing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  SHORT TITLE. This act may be known and cited as the uniform college athlete name, image, or likeness act.

NEW SECTION. **Sec.**  DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Athletic association" means a nonprofit intercollegiate sport governance association that regulates the eligibility of players and institutions.

(2) "College athlete" means an individual who attends or is eligible to attend an institution and engages in or is eligible to engage in an intercollegiate sport regulated by an athletic association. The term does not include an individual:

(a) Participating in a sport in kindergarten through grade 12 or at a youth, preparatory school, recreation, or similar level; or

(b) Permanently ineligible to participate in a particular intercollegiate sport for that sport.

(3) "Conference" means an association, other than a national athletic association, that sponsors or arranges amateur intercollegiate athletic competition between institutions of higher education and sets common rules, standards, procedures, or guidelines for the association.

(4) "Enrolled" means registered for courses and listed on the squad list for an athletic program regulated by an athletic association at an institution. "Enrolls" has a corresponding meaning.

(5) "Financial aid" means athletics-related aid offered or provided by an institution to a prospective or current college athlete.

(6) "Group license" means a name, image, or likeness agreement that covers the name, image, or likeness of more than one college athlete.

(7) "Institution" means a public or private institution of higher education in this state, including a community college, junior college, college, and university. "Institution" includes all institutions of higher education as defined in RCW 28B.10.016.

(8) "Intercollegiate sport" means a sport played at the collegiate level for which eligibility requirements for participation by a college athlete are established by an athletic association. "Intercollegiate sport" does not include a recreational, intramural, or club sport.

(9) "Name, image, or likeness" means "name" and "likeness" as defined in RCW 63.60.020.

(10) "Name, image, or likeness activity" means licensing, transferring, or other commercial use of a name, image, or likeness.

(11) "Name, image, or likeness agent" means an individual who:

(a) Directly or indirectly recruits or solicits a college athlete or, if the athlete is a minor, the athlete's parent or guardian, to enter into an agency contract or name, image, or likeness agreement;

(b) Enters into an agency contract with an athlete or, if the athlete is a minor, the athlete's parent or guardian;

(c) Directly or indirectly offers, promises, attempts, or negotiates to obtain name, image, or likeness compensation or a name, image, or likeness agreement; or

(d) Is an "athlete agent" as defined in RCW 19.225.010.

(12) "Name, image, or likeness agreement" means an express or implied agreement, oral or in a record, under which a third party provides name, image, or likeness compensation.

(13) "Name, image, or likeness compensation" means money or other thing of value provided by a third party in exchange for use of a college athlete's name, image, or likeness.

(14) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(15) "Record" means information:

(a) Inscribed on a tangible medium; or

(b) Stored in an electronic or other medium and retrievable in perceivable form.

(16) "Recruit or solicit" has the same meaning as in RCW 19.225.010.

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

(18) "Student" means an individual enrolled at an institution under the rules of the institution.

(19) "Third party" means a person, other than an institution, that offers, solicits, or enters into a name, image, or likeness agreement or offers or provides name, image, or likeness compensation.

NEW SECTION. **Sec.**  SCOPE. (1) This chapter applies only to college athletes and intercollegiate sports.

(2) This chapter does not create an employment relationship between a college athlete and the athlete's institution with respect to the athlete's participation in an intercollegiate sport. This chapter may not be used as a factor in determining whether an employment relationship exists.

NEW SECTION. **Sec.**  RULE-MAKING AUTHORITY. When requested by at least one institution, the Washington student achievement council shall convene a committee of representatives from institutions within the state that oversee at least one intercollegiate athletics program regulated by an association. This committee may be made up of members chosen by each individual institution and may adopt rules under chapter 34.05 RCW to administer and implement this chapter.

NEW SECTION. **Sec.**  NAME, IMAGE, OR LIKENESS ACTIVITY AND COMPENSATION—LIMIT ON INSTITUTION, CONFERENCE, AND ATHLETIC ASSOCIATION. (1) Except as provided in this section, this chapter does not limit the ability of a college athlete to engage in name, image, or likeness activity to the extent permitted under other law of Washington state.

(2) Except as provided in this section:

(a) An institution, conference, or athletic association may not:

(i) Prevent or restrict a college athlete from:

(A) Receiving name, image, or likeness compensation;

(B) Entering into a name, image, or likeness agreement;

(C) Engaging in name, image, or likeness activity;

(D) Obtaining the services of a name, image, or likeness agent; or

(E) Creating or participating in a group license; or

(ii) Interfere with the formation or recognition of a collective representative to facilitate or provide representation to negotiate a group license;

(b) An athletic association may not prevent or restrict an institution or college athlete from participating in an intercollegiate sport because the athlete receives name, image, or likeness compensation, enters into a name, image, or likeness agreement, engages in name, image, or likeness activity, or obtains the services of a name, image, or likeness agent; and

(c) Receipt of name, image, or likeness compensation may not affect eligibility of a college athlete or the duration, amount, or renewal of an athletic scholarship.

NEW SECTION. **Sec.**  LIMIT ON NAME, IMAGE, OR LIKENESS ACTIVITY AND COMPENSATION. (1) Unless the use is permitted under intellectual property law and approved by the applicable institution, conference, or athletic association, a college athlete may not include in name, image, or likeness activity an institution, conference, or athletic association name, trademark, service mark, logo, uniform design, or other identifier of athletic performance depicted or included in a media broadcast or related game footage.

(2) Name, image, or likeness compensation or an offer, promise, or solicitation of compensation:

(a) May not attempt to influence the decision of a college athlete to attend, continue attending, or transfer to an institution or an institution in a conference;

(b) Must represent only consideration for use of the college athlete's name, image, or likeness or for work actually performed;

(c) May not include compensation for the college athlete's enrollment at a specific institution, or the college athlete's specific performance, participation, or service in an intercollegiate sport; and

(d) May not include compensation for the college athlete's endorsement of a banned substance or of sports wagering.

(3) A college athlete may not express or imply that an institution, conference, or athletic association endorses or is otherwise affiliated with the athlete's name, image, or likeness activity.

(4) An institution may adopt a policy to prevent a college athlete from engaging in name, image, or likeness activity that is illegal or, if the institution complies with the same policy with respect to the institution's sponsorships, multimedia rights, apparel agreement, facility naming rights, licensing, and similar activity, the institution determines has an adverse impact on its reputation. An institution that adopts a policy under this subsection shall disclose the policy and the institution's rationale in a record maintained on the institution's website that is accessible by the public and electronically searchable.

(5) An institution may adopt and enforce rules of conduct relating to name, image, or likeness activity that apply when the college athlete is engaged in an official team activity. An official team activity includes a competition, practice, supervised workout, community service activity done at the direction of, or supervised by, a member of the institution's coaching or sport staff, and/or any other event that has been organized or authorized by an athletics representative of an institution, association, or conference regardless of whether such event occurs on or off the campus of an institution or during or outside the applicable season for competition.

(6) An institution, conference, or athletic association may require a college athlete to waive a name, image, or likeness right associated with promotion, display, broadcast, or rebroadcast related to an intercollegiate sport, or the institution.

NEW SECTION. **Sec.**  INSTITUTION INVOLVEMENT. (1) An institution may:

(a) Assist a college athlete:

(i) In evaluating the permissibility of name, image, or likeness activity, including compliance with law and institution rules or policy;

(ii) With the disclosure requirements of this section;

(iii) By providing good faith advising and evaluation of name, image, or likeness activity including agent review and contract review. Contract review is to be limited coordination with existing university agreements and to ensure compliance with institution rules and policies; and

(iv) In connecting or networking with third parties interested in facilitating or engaging in name, image, or likeness activity with a student athlete or group of student athletes;

(b) Educate the college athlete about name, image, or likeness compensation, agreements, and activity; and

(c) Acknowledge and display the names or trademarks of third parties that facilitate or engage in name, image, or likeness activities with student athletes at the institution.

(2) An institution may permit a college athlete to use the institution's facilities for name, image, or likeness activity under the same terms and conditions as other students at the institution.

(3) Except as provided in subsections (1) and (2) of this section, an institution and its employees, agents, and independent contractors may not:

(a) Provide compensation to a college athlete for the athlete's name, image, or likeness;

(b) Arrange, develop, or secure specific name, image, or likeness activity;

(c) Assist with selecting, arranging for, or providing payment to a name, image, or likeness agent;

(d) Assist with selecting, arranging for, or collecting payment from a third party engaged in specific name, image, or likeness agreements with a college athlete or athletes.

(4) No state employee whose job responsibilities include working with or advising college athletes or an institution shall be found in violation of chapter 42.52 RCW for good faith work-related activity permitted by this chapter.

NEW SECTION. **Sec.**  REQUIRED DISCLOSURES. (1) In addition to any applicable institution policy, a college athlete shall provide or disclose to the individual or office designated under subsection (2) of this section:

(a) A copy of a name, image, or likeness agreement that provides name, image, or likeness compensation to the athlete or the athlete's designee in an amount more than $300 or, if a record of the agreement does not exist, the amount of name, image, or likeness compensation provided or to be provided, if the amount is more than $300;

(b) The amount of name, image, or likeness compensation provided to the athlete or the athlete's designee if the aggregate amount is more than $2,000 in a calendar year and a copy of each name, image, or likeness agreement if a record of the agreement exists;

(c) For each agreement or amount that must be provided:

(i) The arrangement for providing compensation;

(ii) The amount of compensation;

(iii) The identity of and a description of the relationship with the third party;

(iv) The activity required or authorized;

(v) If the athlete is represented by a name, image, or likeness agent, the name of and a description of the agreement with the agent; and

(vi) The approval from an institution required by section 6(1) of this act, if applicable;

(d) A copy of each agreement entered into by the athlete with a name, image, or likeness agent; and

(e) Other information required by the Washington student achievement council.

(2) An institution shall designate an individual or office to receive the information required by subsection (1) of this section.

(3) A college athlete shall provide:

(a) The information required by subsection (1) of this section before the earlier of:

(i) Receiving name, image, or likeness compensation required to be disclosed; or

(ii) Engaging in a name, image, or likeness activity required to be disclosed; and

(b) An update after a change in any of the information required by subsection (1) of this section, not later than 10 days after the earlier of the change or the next scheduled athletic event in which the athlete may participate.

(4) If an institution voluntarily, or as required by this chapter, adopts a limitation affecting a college athlete's ability to engage in name, image, or likeness activity, the institution shall provide in a record a copy of the limitation on its website that is accessible by the public and electronically searchable and to each athlete the institution expects to participate in an intercollegiate sport:

(a) At or before the time an offer of admission or financial aid is made, whichever is earlier; or

(b) If the limitation is adopted after the athlete is a student at the institution, as soon as practicable after adoption.

(5) A name, image, or likeness agreement must contain a statement that the agreement is the sole, complete, and final agreement between the parties. The statement must be made by:

(a) The college athlete or, if the athlete is a minor, the parent or guardian of the athlete;

(b) The third party; and

(c) If a name, image, or likeness agent provided service in connection with the agreement, the agent.

NEW SECTION. **Sec.**  REGISTRATION AS A NAME, IMAGE, OR LIKENESS AGENT—DUTIES—FEE ARRANGEMENTS. (1) A name, image, or likeness agent shall register in Washington state as an athlete agent under chapter 19.225 RCW before engaging in conduct under this chapter.

(2) An agreement between a college athlete and a name, image, or likeness agent must have a fee arrangement consistent with the customary practice of the agent's industry and otherwise complying with chapter 19.225 RCW.

NEW SECTION. **Sec.**  PROHIBITED CONDUCT BY THIRD PARTY. A third party may not intentionally:

(1) Give materially false or misleading information or make a materially false promise or representation with the intent to influence a college athlete, parent or guardian of the athlete, or another person to enter into a name, image, or likeness agreement, receive name, image, or likeness compensation, or engage in name, image, or likeness activity;

(2) Provide anything of value to a college athlete or another person except as permitted under this chapter, if to do so may result in loss of the athlete's eligibility to participate in the athlete's sport; or

(3) Predate or postdate a name, image, or likeness agreement.

NEW SECTION. **Sec.**  CIVIL REMEDY. (1) An institution or college athlete has a cause of action for damages against a name, image, or likeness agent or third party if the institution or athlete is adversely affected by an act or omission of the agent or third party in violation of this chapter. An institution or athlete is adversely affected by an act or omission of the agent or third party only if, because of the act or omission, the institution or athlete:

(a) Is sanctioned, suspended, or declared ineligible to participate in an intercollegiate sport; or

(b) Suffers financial damage.

(2) A college athlete has a cause of action under this section only if the athlete was a student at an institution at the time of the act or omission.

(3) In an action under this section, a prevailing plaintiff may recover actual damages, reasonable attorneys' fees, court costs, and other reasonable litigation expenses.

(4) The institution shall be able to enforce all code of conduct rules, university policies, athletic team rules or standards, and statutes.

(5) The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying chapter 19.86 RCW.

NEW SECTION. **Sec.**  CIVIL PENALTY. The attorney general and the Washington student achievement council may assess a civil penalty against a name, image, or likeness agent or third party not to exceed $50,000 for a violation of this chapter.

NEW SECTION. **Sec.**  UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, a court shall consider the promotion of uniformity of the law among jurisdictions that enact it.

NEW SECTION. **Sec.**  RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits, or supersedes the electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001 et seq., as amended, but does not modify, limit, or supersede 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in 15 U.S.C. Sec. 7003(b).

NEW SECTION. **Sec.**  SEVERABILITY. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec.**  Sections 1 through 15 of this act constitute a new chapter in Title 63 RCW.

**Sec.**  RCW 42.56.270 and 2021 c 308 s 4 are each amended to read as follows:

The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:

(1) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;

(2) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750; (b) highway construction or improvement as required by RCW 47.28.070; or (c) alternative public works contracting procedures as required by RCW 39.10.200 through 39.10.905;

(3) Financial and commercial information and records supplied by private persons pertaining to export services provided under chapters 43.163 and 53.31 RCW, and by persons pertaining to export projects under RCW 43.23.035;

(4) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.325, 43.163, 43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency;

(5) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW;

(6) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information;

(7) Financial and valuable trade information under RCW 51.36.120;

(8) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW;

(9) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010;

(10)(a) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a horse racing license submitted pursuant to RCW 67.16.260(1)(b), marijuana producer, processor, or retailer license, liquor license, gambling license, or lottery retail license;

(b) Internal control documents, independent auditors' reports and financial statements, and supporting documents: (i) Of house-banked social card game licensees required by the gambling commission pursuant to rules adopted under chapter 9.46 RCW; or (ii) submitted by tribes with an approved tribal/state compact for class III gaming;

(c) Valuable formulae or financial or proprietary commercial information records received during a consultative visit or while providing consultative services to a licensed marijuana business in accordance with RCW 69.50.561;

(11) Proprietary data, trade secrets, or other information that relates to: (a) A vendor's unique methods of conducting business; (b) data unique to the product or services of the vendor; or (c) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services or the health care authority for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011;

(12)(a) When supplied to and in the records of the department of commerce:

(i) Financial and proprietary information collected from any person and provided to the department of commerce pursuant to RCW 43.330.050(8);

(ii) Financial or proprietary information collected from any person and provided to the department of commerce or the office of the governor in connection with the siting, recruitment, expansion, retention, or relocation of that person's business and until a siting decision is made, identifying information of any person supplying information under this subsection and the locations being considered for siting, relocation, or expansion of a business; and

(iii) Financial or proprietary information collected from any person and provided to the department of commerce pursuant to RCW 43.31.625 (3)(b) and (4);

(b) When developed by the department of commerce based on information as described in (a)(i) of this subsection, any work product is not exempt from disclosure;

(c) For the purposes of this subsection, "siting decision" means the decision to acquire or not to acquire a site;

(d) If there is no written contact for a period of sixty days to the department of commerce from a person connected with siting, recruitment, expansion, retention, or relocation of that person's business, information described in (a)(ii) of this subsection will be available to the public under this chapter;

(13) Financial and proprietary information submitted to or obtained by the department of ecology or the authority created under chapter 70A.500 RCW to implement chapter 70A.500 RCW;

(14) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the life sciences discovery fund authority in applications for, or delivery of, grants under RCW 43.330.502, to the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information;

(15) Financial and commercial information provided as evidence to the department of licensing as required by RCW 19.112.110 or 19.112.120, except information disclosed in aggregate form that does not permit the identification of information related to individual fuel licensees;

(16) Any production records, mineral assessments, and trade secrets submitted by a permit holder, mine operator, or landowner to the department of natural resources under RCW 78.44.085;

(17)(a) Farm plans developed by conservation districts, unless permission to release the farm plan is granted by the landowner or operator who requested the plan, or the farm plan is used for the application or issuance of a permit;

(b) Farm plans developed under chapter 90.48 RCW and not under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to RCW 42.56.610 and 90.64.190;

(18) Financial, commercial, operations, and technical and research information and data submitted to or obtained by a health sciences and services authority in applications for, or delivery of, grants under RCW 35.104.010 through 35.104.060, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information;

(19) Information gathered under chapter 19.85 RCW or RCW 34.05.328 that can be identified to a particular business;

(20) Financial and commercial information submitted to or obtained by the University of Washington, other than information the university is required to disclose under RCW 28B.20.150, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the University of Washington consolidated endowment fund or to result in private loss to the providers of this information;

(21) Market share data submitted by a manufacturer under RCW 70A.500.190(4);

(22) Financial information supplied to the department of financial institutions, when filed by or on behalf of an issuer of securities for the purpose of obtaining the exemption from state securities registration for small securities offerings provided under RCW 21.20.880 or when filed by or on behalf of an investor for the purpose of purchasing such securities;

(23) Unaggregated or individual notices of a transfer of crude oil that is financial, proprietary, or commercial information, submitted to the department of ecology pursuant to RCW 90.56.565(1)(a), and that is in the possession of the department of ecology or any entity with which the department of ecology has shared the notice pursuant to RCW 90.56.565;

(24) Financial institution and retirement account information, and building security plan information, supplied to the liquor and cannabis board pursuant to RCW 69.50.325, 69.50.331, 69.50.342, and 69.50.345, when filed by or on behalf of a licensee or prospective licensee for the purpose of obtaining, maintaining, or renewing a license to produce, process, transport, or sell marijuana as allowed under chapter 69.50 RCW;

(25) Marijuana transport information, vehicle and driver identification data, and account numbers or unique access identifiers issued to private entities for traceability system access, submitted by an individual or business to the liquor and cannabis board under the requirements of RCW 69.50.325, 69.50.331, 69.50.342, and 69.50.345 for the purpose of marijuana product traceability. Disclosure to local, state, and federal officials is not considered public disclosure for purposes of this section;

(26) Financial and commercial information submitted to or obtained by the retirement board of any city that is responsible for the management of an employees' retirement system pursuant to the authority of chapter 35.39 RCW, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the retirement fund or to result in private loss to the providers of this information except that (a) the names and commitment amounts of the private funds in which retirement funds are invested and (b) the aggregate quarterly performance results for a retirement fund's portfolio of investments in such funds are subject to disclosure;

(27) Proprietary financial, commercial, operations, and technical and research information and data submitted to or obtained by the liquor and cannabis board in applications for marijuana research licenses under RCW 69.50.372, or in reports submitted by marijuana research licensees in accordance with rules adopted by the liquor and cannabis board under RCW 69.50.372;

(28) Trade secrets, technology, proprietary information, and financial considerations contained in any agreements or contracts, entered into by a licensed marijuana business under RCW 69.50.395, which may be submitted to or obtained by the state liquor and cannabis board;

(29) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the Andy Hill cancer research endowment program in applications for, or delivery of, grants under chapter 43.348 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information;

(30) Proprietary information filed with the department of health under chapter 69.48 RCW;

(31) Records filed with the department of ecology under chapter 70A.515 RCW that a court has determined are confidential valuable commercial information under RCW 70A.515.130; ((~~and~~))

(32) Unaggregated financial, proprietary, or commercial information submitted to or obtained by the liquor and cannabis board in applications for licenses under RCW 66.24.140 or 66.24.145, or in any reports or remittances submitted by a person licensed under RCW 66.24.140 or 66.24.145 under rules adopted by the liquor and cannabis board under chapter 66.08 RCW; and

(33) College athlete disclosures related to name, image, or likeness activity under chapter 63.--- RCW (the new chapter created in section 16 of this act).

**--- END ---**