From: Duane Searle
Sent: Monday, June 7, 2021 3:17 PM
To: Dale Higer
Subject: ULC - Uniform College Athlete Name, Image, and Likeness Issues Act - Comments

Hello, Commissioner Higer:

I attended the informal session of your committee today and have three questions/comments to submit for consideration by the committee:

1. In Section 6(a), the act states that the college athlete may include in the name, image, or likeness activity the institution's name, etc. "only if the use is permitted under intellectual property law." This phrase would appear to impose only one condition. However, the section then goes on to provide other circumstances when the college athlete's activities can be prohibited or limited. The trouble I am having is with the word "only" on line 12. How does that mesh with the other subsections that may operate to limit the efforts of the student athlete? To integrate the other provisions of this section, should line 12 read: "footage only if the use is permitted under intellectual property law and the name, image, or likeness activity is not otherwise prohibited in accordance with this section."?
2. Commissioner's Winkelman's comment on section 6(d) makes me wonder how far reaching the institution's policy to prohibit college athletes from engaging in certain activity goes. Is there a potential problem with this subsection for contracts already entered into by a college athlete that were acceptable at the time, but later (due to a new policy or change to an existing policy of the institution), are no longer permitted? Will the existing contract be automatically grandfathered in for protection from the policy? Does the act need to expressly provide for that, if it is desirable to balance the interests of the parties? What if complying with the policy would require the college athlete to breach the contract? I do not know if this hypothetical is likely to occur in the real world. But has the committee considered whether pre-existing contracts by the college athlete can place the college athlete in a contractual dilemma with a policy adopted after the contract's execution? If so, then you have already accounted for this scenario.
3. Section 17 provides a college athlete (and the institution) with a cause of action, and in subsection (a) requires that they have been "adversely affected…". In subsection (b), it states that the "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 commission." My concern is similar to comment 1 above. If being at a student at the institution is the "only" requirement under subsection (a), does the student still need to be adversely affected under subsection (a)? If so, then the use of "only" in subsection (b) would appear to be conflict with subsection (a). If the committee intends, and I think it probably does, for both requirements to be satisfied for the college athlete to have standing to bring the action, then I think subsection (b) should read something like: "(b) A college athlete has a cause of action under this section only if the athlete was a student at an institution as the time of the act or omission and is adversely affected as provided in subsection (a)."

Thank you for considering these comments.

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Commissioner from Pennsylvania